

Exhibit I

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 DOCKET NO: 2:19-cv-17615-MCA-LDW
4 -----x
5 JLS EQUITIES, LLC, A NEW YORK LIMITED :
6 LIABILITY COMPANY, :
7 Plaintiff, : CIVIL ACTION
8 vs. :
9 RIVER FUNDING, LLC; LENOX HUDSON, :
10 LLC; LENOX TEMPLE, LLC; TEANECK PLAZA :
11 VENTURES, LLC; SETH LEVINE and SHIRA :
12 LEVINE, :
13 Defendants. :
14 -----x

15 V I D E O C O N F E R E N C E
16 DEPOSITION OF: HERBERT TEPFER
17 DATE: THURSDAY, MARCH 24, 2022
18 COMMENCING AT: 10:08 A.M.

19
20 RENZI LEGAL RESOURCES
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Computer-aided transcript of the deposition
testimony of HERBERT TEPFER taken stenographically
in the above-entitled matter before Donna Brunck, a
Certified Court Reporter, License #30XI00148700, and
Notary Public of the State of New Jersey, via Zoom
Videoconference, on March 24, 2022, commencing at
10:08 a.m.

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25

1 HERBERT TEPFER, having been first duly sworn (via
2 Zoom videoconference), testified as follows:

3 - - - -

4 EXAMINATION BY MR. DUGGAN:

5 Q. Thank you. Mr. Tepfer, my name is
6 Timothy Duggan. I represent JF Equities in a
7 lawsuit that is pending in the federal district
8 court?

9 MR. MARGOLIN: It's JLS Equities.

10 MR. DUGGAN: JLS Equities, yes.

11 Q. JLS Equities in a federal action and
12 companion state court action filed in the Superior
13 Court of New Jersey. Are you aware of those
14 lawsuits?

15 A. I'm aware that they exist. I don't
16 know the details.

17 Q. Have you ever been deposed before?

18 A. I think so, yeah.

19 Q. Now, where are you today? Are you in
20 your lawyer's office?

21 A. Yes.

22 Q. And for purposes of this deposition,
23 the balance of the attorneys are in remote locations
24 and we are taking this deposition remotely with you
25 being in your office, your lawyer's office. Do you

1 understand that?

2 A. Yeah.

3 Q. Okay. There's a court reporter here
4 today that will be taking down what you say and it
5 will be turned into a transcript. Do you understand
6 that?

7 A. Yeah.

8 Q. Although this seems to be a little
9 more formal, it has the same force and effect as
10 being in a courtroom in front of a judge and jury.
11 Do you understand that?

12 A. Yeah.

13 Q. When I ask questions, if you could
14 please allow me to finish the question, even if you
15 know where I'm going, so that the court reporter can
16 accurately take down the question and the answer as
17 opposed to a casual conversation. If that will be
18 okay?

19 A. I will do my best.

20 Q. If a question's confusing, I'd ask
21 you not to guess. Please tell me it's confusing and
22 I will try to reword it, and for purposes of today's
23 responses, unless you say otherwise, we'll assume
24 that they are based upon your firsthand knowledge.
25 Do you understand that?

1 A. Yeah.

2 Q. If there's an objection made by your
3 counsel, please stop speaking and allow us to
4 resolve the objection. Again, so we will have a
5 clean record as it gets turned into a transcript.
6 If you need a break --

7 A. Okay.

8 Q. If you need a break for any reason,
9 just let us know.

10 A. I will.

11 Q. Just let us know and we'll go. Are
12 you taking any medications that would impair your
13 ability to understand questions or answer
14 accurately?

15 A. No.

16 Q. Do you have any other health
17 conditions that would impair your ability to proceed
18 today before we get going?

19 A. No.

20 Q. So feeling pretty good today?

21 A. Yeah.

22 Q. I'd like to show you what we've
23 marked as Exhibit JLS Exhibit 1. Could everybody
24 see that?

25 MR. MARGOLIN: I can. Tim, are you

1 going to share those documents like that?

2 MR. DUGGAN: I'll share the
3 documents, everyone has them.

4 MR. MARGOLIN: I have them, yeah.

5 MR. DUGGAN: They can look at them
6 themselves. I'll also share in case, does everybody
7 have them from the file?

8 MR. MARGOLIN: I'll tell you what I
9 do. When you are sharing documents what I'm going
10 to do is I'm going to move the screen onto the side
11 because it's larger, a second larger screen. You
12 are going to see Herb from the side because the
13 camera is still in front of him.

14 MR. DUGGAN: That's fine.

15 MR. MARGOLIN: He's looking this way.

16 Q. You see we've marked as Exhibit JLS
17 Exhibit 1 with the marking on the bottom of the
18 first page.

19 (Exhibit JLS-1, Document, is received
20 and marked for identification.)

21 A. I see that, yeah.

22 Q. Have you seen this document before?

23 A. I believe so, yeah.

24 Q. Are you here today as a
25 representative of J&J Capital Realty Associates LLC?

1 A. Yes.

2 Q. For today if I refer to J&J Capital,
3 it will be to J&J Capital Realty Associates; is that
4 okay?

5 A. Yes.

6 Q. For my client, JLS Equities, LLC,
7 I'll refer to them as JLS, if that's okay?

8 A. Okay.

9 Q. Great. If I go down to Schedule A
10 here, are you the witness with the knowledge of all
11 the categories that we have on Schedule A?

12 A. I don't think any intimate knowledge
13 of the details of all of that, not at my fingertips,
14 but I'm the witness of J&J and I know about as much
15 as anybody else does.

16 Q. So you are here today as the
17 designated representative in response to Exhibit JLS
18 Exhibit 1?

19 A. Yes.

20 Q. How many times have you been deposed,
21 Mr. Tepfer, do you believe?

22 A. Maybe once, twice -- two or three
23 times, in connection with a personal injury case and
24 one other matter, yeah. Twice maybe.

25 Q. Besides the personal injury case, was

1 the other one a case involving any type of business
2 transaction?

3 A. Yes.

4 Q. What kind of case was that?

5 A. It was also a real estate
6 transaction.

7 Q. Approximately when was that?

8 A. Maybe ten years ago, eight years ago.

9 Q. Have you been a -- you or J&J been a
10 party to any lawsuit over the past ten years?

11 A. I've been named as a nominal party
12 as -- on some lawsuits.

13 Q. Have you been a plaintiff in any
14 lawsuits?

15 A. Possibly foreclosure lawsuits with
16 J&J, not myself.

17 Q. How many foreclosures do you think
18 J&J's filed in the past ten years?

19 A. Maybe two -- one or two or three,
20 something like that. One or two maybe.

21 Q. Have you ever testified at trial as a
22 party in any case?

23 A. I think not.

24 Q. What did you do to prepare for
25 today's deposition? And I would request that you do

1 not disclose any discussions that you had with your
2 attorney.

3 A. Well, I'll disclose that I had
4 discussions with my attorney, but that's what I did
5 to prepare. I viewed some documents.

6 Q. What documents did you review?

7 MR. MARGOLIN: Objection, that is
8 work -- attorney work product. He reviewed them
9 with me. We selected them together. We thought
10 about it together. Don't answer that question.

11 MR. DUGGAN: That is not an
12 attorney-client privilege. The fact that he looked
13 at loan documents is not work product.

14 MR. MARGOLIN: I agree. It is
15 totally not attorney-client privilege. It's an
16 objection to attorney/client --

17 MR. DUGGAN: I asked what documents
18 did he review for today's deposition, and, Yan, if I
19 understand your objection, you are saying it's
20 attorney work product.

21 MR. MARGOLIN: Yes, because he
22 reviewed them with me. If you reviewed anything
23 without me present and without us talking about it
24 together, you can answer that question, but as far
25 as anything we are doing together during a

1 preparatory session, yeah, work product.

2 MR. DUGGAN: I'm going to ask it one
3 more time and put your objection on the record.

4 Q. What documents did you personally
5 review yourself in preparing for this deposition?

6 MR. MARGOLIN: Objection as to
7 attorney work product for any documents reviewed
8 with me together in your office when we met
9 yesterday. That is absolutely attorney work
10 product. Anything you reviewed separately, you may
11 answer. If you didn't or you don't remember, you
12 can also answer.

13 MR. DUGGAN: We'll let the judge make
14 the call.

15 Q. Did you review any documents
16 separately from your attorney?

17 A. Yes.

18 Q. What documents?

19 A. The basic loan documents in this
20 file.

21 Q. What were those?

22 A. A note, a mortgage, a rider, some
23 affidavits, an agreement, that's basically it, five
24 or six documents.

25 Q. Any emails or any other documents?

1 A. No, I did not review those.

2 Q. Did you review any of the documents
3 that were produced by JLS in this case?

4 A. No.

5 Q. Did you discuss this deposition with
6 anyone other than your counsel?

7 A. Yes.

8 Q. Who's that?

9 A. I told my wife where I was going this
10 morning.

11 Q. Anybody else?

12 A. No.

13 Q. Is your wife an owner of J&J Capital?

14 A. Her name is on it, yeah. I think in
15 the initial filings may have been in her name, she
16 and another family member.

17 Q. Well, might as well -- who are the --
18 J&J Capital is a limited liability company?

19 A. Yes.

20 Q. Who are the members?

21 A. It's Joseph Tepfer, my brother and
22 myself and I believe his wife and my wife may be on
23 it.

24 Q. So basically it's you and your
25 brother and your spouses, correct?

1 A. Yes.

2 Q. Just give us shortly your educational
3 background?

4 A. I graduated college. I graduated law
5 school and I'm practicing law.

6 Q. And where did you go to college?

7 A. Brooklyn College, City College.

8 Q. Where did you go to law school?

9 A. Brooklyn Law School.

10 Q. Did you take any -- do you have any
11 other degrees besides your undergraduate and your
12 law degree?

13 A. No.

14 Q. Where are you presently employed?

15 A. I have my own office at 4429 18th
16 Avenue in Brooklyn, 11204.

17 Q. What kind of office is that? Is that
18 a law office?

19 A. Law office.

20 Q. So presently you're practicing as a
21 lawyer, correct?

22 A. Yes.

23 Q. How long -- what's the name of that
24 firm?

25 A. Tepfer & Tepfer.

1 Q. And how long have you been at that
2 firm?

3 A. For the last --

4 MR. MARGOLIN: Forever.

5 A. -- 43 years or something like that,
6 maybe 41 years, 41, two years.

7 MR. MARGOLIN: Longer than I've been
8 alive.

9 Q. During the past 41 years, you've been
10 in practice for yourself essentially?

11 A. Yeah.

12 Q. Were you involved in any other
13 businesses during that time period?

14 A. I bought and sold a piece of real
15 estate here or there. Not much. No.

16 Q. Do you have a real estate license?

17 A. No.

18 Q. Besides the law license, driver's
19 license and marriage license, do you have any other
20 professionals licenses?

21 A. Notary license.

22 Q. What type of law do you generally
23 practice?

24 A. Generally real estate.

25 Q. Do you represent lenders?

1 A. Yes.

2 Q. What percentage of your practice do
3 you think is lenders roughly?

4 A. 50, 60 percent.

5 Q. 50, 60 percent lenders, and what's
6 the balance?

7 A. The balance could be a hodgepodge of
8 buyers and sellers and, yeah, I guess pretty much,
9 and then general stuff. It's a storefront office,
10 so sometimes it's just a power of attorney
11 preparation or a notary or sale of a business or,
12 you know, things like that. Neighborhood stuff.

13 Q. Are you involved in actual lending
14 yourself?

15 A. Me personally? Sometimes my money
16 will go into a loan.

17 Q. Can you explain what that means?

18 A. Means on occasion if there are two or
19 three investors putting together money, I will say
20 okay, I'll put a little bit of my money in as well.

21 Q. What's the mechanism for the
22 investors to get together to make those loans?

23 A. The mechanism? Well, I have clients
24 that have money and I have clients that need money,
25 and sometimes I will make arrangements so that the

1 ones that have it can give it to the ones that need
2 it.

3 Q. When you do that, do you generally do
4 that through J&J Capital or one of your other
5 entities?

6 A. There are instances when the lender
7 himself has got his own loan. He's asking you to do
8 documentation. The loan will be in the lender or
9 group of lenders, their own names, but where it's
10 something that I would have put together, then it
11 would be in the name of J&J Capital.

12 Q. What's Park National?

13 A. Park National is another lender that
14 I sometimes represent.

15 Q. Are you a member of Park National?

16 A. No.

17 Q. Do you invest in Park National?

18 A. No. I may have jointly made a loan
19 or two with them maybe under J&J and Park National,
20 but I don't invest with them. I'm not a member or
21 in any way connected with them.

22 Q. So the only entity that you're an
23 owner of and make loans through would be J&J
24 Capital?

25 A. Yes, yeah, I think so.

1 Q. When J&J makes a loan, does it get
2 investors to invest in the loan, or is it just money
3 from the individual members?

4 A. No, it would be money from an
5 investor, from investors, yeah, participants, yeah.

6 Q. Participants, okay. So if J&J, I'm
7 trying to understand how you structure it. If J&J
8 is making a loan and there's investors, how do you
9 structure it?

10 A. I just do the loan in the name of J&J
11 and I'll acknowledge each of the participants, you
12 are a participant, you put in 50,000, you put in
13 100,000, you put in 200,000, and each one knows the
14 extent of his participation.

15 Q. Is that participation in the form of
16 a capital contribution to the LLC?

17 A. No, it's just a money transfer to,
18 generally to my attorney IOLA account, and from
19 there the closing disbursements are made. They
20 don't become members in J&J. They are not making
21 capital contributions.

22 Q. That's done on a participation basis?

23 A. An individual loan, yeah. They
24 participate in an individual loan.

25 Q. Then is J&J Capital more of a

1 servicer in those situations?

2 A. Yeah, yeah. Initiator and a
3 servicer, yeah.

4 Q. How does J&J Capital get paid?

5 A. We get paid at the closing for some
6 origination fee or broker's fee and it would -- and
7 then it gets paid monthly, you know, from the
8 borrower monthly and then makes distribution.

9 Q. How is that distribution determined?

10 A. By check -- how is it determined?

11 Q. Yeah.

12 A. By the amount that each investor put
13 in. Each one gets his pro rata share.

14 Q. So if you have a participation, then
15 J&J Capital would be the lead in the participation?

16 A. J&J Capital is the lead name wise,
17 not always money wise.

18 Q. Do you have participation agreements
19 with the investors?

20 A. I generally don't, no. Most of them
21 are old clients, old friends, family members even
22 sometimes. No, I don't enter into a full formal
23 participation agreement. I can give them a letter,
24 I give them copies of the documents and things like
25 that, but I don't have a full-fledged participation

1 agreement.

2 Q. So if a family member or friend
3 invests with J&J, J&J is the lead in an oral
4 participation agreement with the payments being made
5 on a pro rata basis, correct?

6 A. Right.

7 Q. Do you know Seth Levine?

8 A. I know the name.

9 Q. Have you ever met him?

10 A. No.

11 Q. How do you know the name?

12 A. I know the name because he was one of
13 the people that I did loans with.

14 Q. How many loans did you do with him?

15 A. Three.

16 Q. Do you recall the three loans?

17 A. I recall there were three. I can't
18 recite to you the addresses by heart. I have -- to
19 or the collateral mortgage addresses by heart, but I
20 know that there were three loans that I did with
21 him.

22 Q. Do you know who the borrowers were on
23 those three loans?

24 A. Seth Levine and the various entities
25 in which he -- through the various entities that he

1 operated different buildings under, different
2 properties under.

3 MR. MARGOLIN: Just for the record,
4 I'm trying to clarify. When you say when I, do you
5 mean you J&J, or do you mean you like him
6 personally?

7 MR. DUGGAN: Let me ask him.

8 Q. What entity made the three loans?

9 A. J&J.

10 Q. Is one of those loans the loan we are
11 here on today?

12 A. I believe so, yeah.

13 Q. Then there's two other mortgage
14 loans?

15 A. Yes.

16 Q. You don't recall what entity was the
17 borrower on those loans?

18 A. I'd have to, you know, look up some
19 documents or papers that I, you know, right now
20 looking at you, I can't recite the addresses of
21 them.

22 Q. Do you know Andrew Selevan?

23 A. I never met him, but I know the name.

24 MR. MARGOLIN: It's Selevan, not
25 Selevan.

1 MR. DUGGAN: Selevan.

2 Q. Do you recall that he's Mr. Levine's
3 lawyer?

4 A. Yes.

5 Q. Have you ever personally met him?

6 A. No.

7 Q. How do you know of him?

8 A. I know of him through the deals that
9 we did with Seth Levine. He interfaced with me and
10 sent me certain documents and I sent him certain
11 documents. We had conversation on the phone.

12 Q. Was he the lawyer involved in all
13 three loans that J&J made to Seth Levine and his
14 entities?

15 A. Yes.

16 Q. Have you ever had any business or
17 legal dealings with him outside of the three Levine
18 transactions?

19 A. No, I think not. I don't think so.

20 Q. Besides the three loans you just
21 spoke about, have you had any other business
22 dealings at all with Seth Levine or any of his
23 entities?

24 A. I may have done some of the legal
25 papers on behalf of another lender with Seth Levine.

1 Q. What other lender was that?

2 A. Park National.

3 Q. You believe that Seth Levine had the
4 same lawyer?

5 A. Yeah.

6 Q. Are you familiar with any of the
7 other lenders that made loans to Seth Levine or
8 other Levine entities?

9 A. No, I don't think so.

10 Q. Do you know Jacob Sod?

11 A. No.

12 Q. Have you ever heard that name before?

13 A. I don't recall at this moment. I
14 don't recall ever hearing it.

15 Q. Have you ever heard of JLS Equities,
16 LLC?

17 A. No, other than it's on the caption in
18 this case.

19 Q. Are you familiar with the scheme
20 perpetrated by Seth Levine?

21 A. I think I'm a victim.

22 Q. Just what's your understanding of
23 what happened?

24 A. I think he was pledging multiple
25 properties to multiple investors, multiple lenders,

1 and exceeding his authority and misstating his
2 authority and his position in a standing in various
3 entities.

4 Q. I'd like to show you what I put up on
5 the screen which is marked as JLS Exhibit 2.

6 (Exhibit JLS-2, Document request, is
7 received and marked for identification.)

8 Q. I ask you if you recognize that
9 document?

10 A. Yeah, I saw it earlier.

11 MR. MARGOLIN: This is from the state
12 case.

13 MR. DUGGAN: No, this is from the
14 federal case.

15 MR. MARGOLIN: Okay, federal, okay.
16 This is from the 6/15 caption.

17 A. I may lean forward a little bit to
18 see a little better. Does that take me out of the
19 camera?

20 Q. Don't worry about the camera. As
21 long as we can hear you, it's fine. We are not
22 videotaping, so it's just taken down in a written
23 transcript. Do whatever makes you comfortable.

24 Do you see the document request on
25 page --

1 MR. MARGOLIN: This is about as big
2 as I can get it.

3 A. I see it.

4 Q. If you see there, there's 20
5 categories of documents. Do you recall reviewing
6 this and looking for the documents?

7 A. Yeah.

8 Q. And did J&J produce all documents in
9 its possession or control that are identified in
10 this document request?

11 A. To the best of my ability, whatever I
12 was able to put my hands on. There's nothing that I
13 withheld. Anything that I was able to find and
14 comply, I did.

15 Q. Just going back to J&J, when J&J
16 Capital makes a loan, who's the person that
17 negotiates the terms of the loans in general?

18 A. It could be an intermediary, perhaps
19 a broker involved or if, you know, and they would
20 negotiate between myself, my brother and the
21 borrower and/or it could be us if it indicates us
22 directly.

23 MR. MARGOLIN: Off the record for one
24 second.

25 (A discussion takes place off the

1 record.)

2 Q. You were just discussing how the
3 deals were negotiated either through a broker or you
4 and your brother directly, correct?

5 A. Yes.

6 Q. And once you struck a deal, who would
7 be responsible on J&J's side for putting the
8 structure together?

9 A. What do you mean by structure,
10 looking for the participants?

11 Q. How you were going to structure it,
12 yeah. A loan? A mortgage? You know, the structure
13 of the transaction?

14 A. Well, I would prepare the mortgage
15 documents. All the loans were done as mortgages.

16 Q. So is it correct to say J&J Capital
17 just makes mortgage loans?

18 A. Yeah, J&J Capital Realty does
19 mortgage loans, yeah.

20 Q. Are most of these short-term loans?

21 A. Usually have a one-year term,
22 sometimes they are shorter, sometimes one year drags
23 to two or three.

24 Q. Would you consider that a form of
25 bridge lending?

1 A. Not always, no. Not always bridge
2 lending. Sometimes they would, it would be for
3 construction purposes, you know, or for acquisition
4 purposes. I don't know, depends how long the bridge
5 is.

6 Q. In these transactions, how often do
7 you use the declaration of restrictions as a
8 document?

9 A. All the time.

10 Q. Why do you do that?

11 A. Because I don't want them to -- I
12 want to restrict the secondary financing and the
13 placing of additional financial burden onto whatever
14 the cash flow the borrower has or the property has.

15 Q. Do you use the declaration of
16 restriction when you also file a mortgage against
17 the property?

18 A. Yes.

19 Q. Why would you use both?

20 A. Well, I would use a declaration on
21 top of it, because some people could just go
22 willy-nilly and just sell the property to a new
23 owner and disregard the restriction on the sale that
24 the mortgage contains, and they'll say okay, so go
25 foreclose, and I don't want to be put into bed with

1 a new borrower that I don't know, that I didn't
2 approve to give the loan to.

3 Q. How would the declaration of
4 restrictions provide you with any more protection
5 than the mortgage document itself?

6 A. Some buyer may want to buy and he'll
7 say I don't care whether there's a mortgage on it or
8 not. I'll take it with the mortgage, but the
9 declaration of restriction I think will put his
10 title company on notice and they would probably, you
11 know, halt and not insure his title with that
12 declaration.

13 Q. When J&J Capital does make a mortgage
14 loan, you know, who does the due diligence on behalf
15 of J&J Capital?

16 A. If there's a broker involved and it's
17 someone that we have familiarity and some confidence
18 in, they would have done it. If not, then we would
19 do it.

20 Q. That due diligence is commonly
21 referred to underwriting of the loan?

22 A. We are not that formal. I don't have
23 an underwriting department. I don't -- you know,
24 I'll give it the smell test. I'll see who the
25 borrower is. I'll look at where the property is

1 and, you know, know a little bit about the
2 neighborhood and the property itself and maybe
3 online, maybe a visit to the property, if it's
4 local, and that's the extent of the underwriting.

5 Q. That was really my next question is
6 to ask you to describe your underwriting process.
7 Did you just do that for us?

8 A. Yeah.

9 Q. Generally do you have the borrowers
10 or does J&J get a formal appraisal before making a
11 loan?

12 A. No. Online appraisals, you know, and
13 neighborhood scouting the neighborhoods, speaking to
14 local brokers.

15 Q. What types of documents do you
16 generally get, again I'm talking the general process
17 with J&J Capital, from borrowers before deciding to
18 make a mortgage loan?

19 A. Before the signing?

20 Q. Yes.

21 A. Before the granting of the loan?

22 Q. Correct.

23 A. It would be, I guess, sometimes it
24 would require a deposit, a good faith deposit, and
25 sometimes it could be a credit report on occasion.

1 Not always. I would get, there's entity documents.

2 Q. Anything else?

3 A. No.

4 Q. I'd like to show you what we've
5 marked as Exhibit JLS-5. Is that up there?

6 (Exhibit JLS-5, Pleading, is received
7 and marked for identification.)

8 A. Yes, I see it.

9 Q. Are you familiar with this document?

10 A. Is that the one you showed me
11 earlier?

12 Q. No, this is a new document. In fact,
13 what I'll do is I'll get right to it. If you go to
14 page 18 cross the top it says cross-claims, do you
15 see that there?

16 A. Yeah.

17 Q. I'll represent that this is a
18 pleading filed in this case, and I'm going to ask
19 you if you are familiar with this and if this
20 document describes the loan that you're trying to
21 collect in this action?

22 MR. MARGOLIN: Objection, Tim, when
23 you say a "pleading filed," can you identify by whom
24 it was filed, on whose behalf, so he understands?

25 MR. DUGGAN: Yeah. It was filed by

1 J&J's counsel in the District Court action as set
2 forth with the filing stamp up here, so if we go to
3 the first page, which is up here, it gives you the
4 captions that it was filed in. It's a document that
5 covers --

6 MR. MARGOLIN: It's J&J's pleading in
7 this case. I didn't want to say it, I didn't want
8 to testify on the record. That's what it is.

9 MR. DUGGAN: Yeah.

10 Q. So if you look at page 18, that's the
11 beginning of a cross-claim against JLS. Do you see
12 that there?

13 A. Yeah.

14 Q. Is that the loan we are here on
15 today?

16 MR. MARGOLIN: Calls for speculation,
17 but --

18 A. I'm just reading it now.

19 Q. I don't understand the speculation
20 document. I'm asking this is the pleading that we
21 are here on today in this case?

22 A. Yes, that's the lawsuit that we're
23 talking about.

24 MR. MARGOLIN: Is there any way to
25 make it bigger? I feel Herb is squinting.

1 Q. Are you familiar with the loan
2 described in the cross-claims against JLS?

3 A. The loans, the two loans made by J&J,
4 the loans --

5 Q. The single loan made by J&J Capital
6 that you contend is secured by the two mortgages?

7 A. Am I familiar with the loan? Yeah.

8 Q. Yes, okay. How did this loan arise?

9 A. This was the third loan that I did
10 with Seth Levine, and I had done the first two on
11 the introduction of a broker involved, and he had
12 done other loans with Seth Levine I think with Park
13 National prior to that, and that's how -- this is
14 one of the three that arise through that broker's
15 introduction.

16 Q. Who was the broker?

17 A. Fellow named Tyrnauer.

18 Q. How do you spell that?

19 A. T-y-r-n-a-u-e-r.

20 Q. How do you know Mr. Tyrnauer?

21 A. Well, he's been introducing loans and
22 giving me loans, you know, recommending loans,
23 referring loans to me for a while, for years.

24 Q. So he's the one that introduced you
25 to Mr. Levine on this particular loan?

1 A. Yeah.

2 Q. Who negotiated the terms of the J&J
3 Capital loan that we are here on today?

4 A. It was, again, it was through Mr.
5 Levine and Mr. Tyrnauer and myself.

6 Q. What did you do in terms of due
7 diligence on this particular loan?

8 A. I believe Mr. Tyrnauer visited the
9 office of Mr. Levine, and he took a look at the
10 operation, the management of the property, the rent
11 collections of the property, some of the deposits
12 that were being made, and he reported back to me.

13 Q. Did he prepare a report for you or
14 how did he report back to you?

15 A. No, no, just orally.

16 Q. Then what did J&J Capital do after it
17 received the verbal report from the broker?

18 A. Well, we were going to go ahead and
19 do the loan.

20 Q. Then who decided on the loan terms?

21 A. It was negotiated with Mr. Levine.
22 Maybe Mr. Selevan -- no, I don't think he
23 participated in the terms. It was Mr. Levine,
24 myself and the broker.

25 Q. Then who prepared the documents?

1 A. We did.

2 Q. When you say "we," do you mean you?

3 A. Yeah. My office.

4 Q. You individually at your office
5 prepared the documents?

6 A. Yes.

7 Q. What was the collateral for the loan?

8 A. The two properties in Jersey.

9 Q. Do you recall the purpose of the
10 loan?

11 A. He was going to be buying the
12 mortgage, taking an assignment of a mortgage from
13 some bank and that he needed the funding for that.

14 Q. Okay. Do you recall what he needed
15 the funding for?

16 A. Yeah, to purchase a mortgage from a
17 bank.

18 Q. So it's your understanding that the
19 loan was providing purchase money financing for the
20 purchase of a loan from another lender?

21 A. Yes.

22 Q. Do you recall who was -- what entity
23 was going to purchase that loan?

24 A. Mr. Levine's entity. I don't know
25 the name of it, but -- I don't remember the name of

1 it, but an entity of Mr. Levine's.

2 Q. For the balance of the deposition,
3 when I reference the J&J Capital loan, I'll be
4 referring to the loan that's described in the
5 cross-claim filed in the case; is that okay?

6 A. Yeah.

7 Q. Okay. I'd like to show you what
8 we've marked as Exhibit JLS-11 and ask you if you
9 recognize that document?

10 A. Yeah.

11 Q. What is this document?

12 (Exhibit JLS-11, Participation
13 agreement, is received and marked for
14 identification.)

15 A. It's sort of an agreement that was
16 alongside the mortgage and the note and the
17 guarantee and the other loan documents and the
18 declaration.

19 Q. Who prepared it?

20 A. My office with, together with
21 Mr. Selevan.

22 Q. If I go to the seventh page, is that
23 your signature on the seventh page?

24 A. Yeah.

25 Q. Is this the main document governing

1 the terms of the J&J Capital loan?

2 A. The main document is the mortgage,
3 but this was sort of a -- (inaudible) touches on the
4 terms as well.

5 (Zoom cut out.)

6 (The question is read back by the
7 reporter.)

8 A. Yes, the main document was the
9 mortgage, the loan documents were the guarantee and
10 this was sort of an ancillary document to sort of
11 give it the structure and the purpose.

12 Q. So if we look at the top here, you
13 have it's the entities that signed this are Seth
14 Levine, Norse Holdings and River Funding. Do you
15 see that there?

16 A. Yes.

17 Q. Do you know why they are referred to
18 as the assignees?

19 A. Assignees, I think that they were
20 going to be taking assignment of that mortgage.

21 Q. Okay. Lenox Temple and Teaneck Plaza
22 are not parties to the agreement, are they?

23 A. You have to look at the signature
24 page.

25 Q. Referring now to the signature page,

1 which is page 7 of the participation agreement?

2 A. Right. So they are not party to this
3 agreement, just Seth Levine is party on behalf of
4 Norse and River.

5 Q. J&J Capital is referred to as an
6 investor. Why is J&J Capital referred to as an
7 investor?

8 A. I don't know. Loosely, I guess, J&J
9 capital is referred to as -- that's my group of
10 investors, I guess.

11 Q. So that's referring to the group of
12 investors investing in this transaction with the
13 assignees?

14 A. Yeah, lending the money, yeah.

15 Q. This is an investment, not a loan,
16 correct?

17 MR. MARGOLIN: Calls for speculation.
18 Counsel is testifying.

19 Q. You can answer it if you can.

20 A. No, it was a mortgage. It was a
21 loan.

22 Q. If we go down to the first whereas,
23 it says it's currently under contract for the
24 purchase of a note and assignment of a foreclosure
25 action. Do you see that there?

1 A. Yes.

2 Q. That's with Provident Bank and Norse
3 Holdings?

4 MR. MARGOLIN: Calls for speculation.

5 MR. DUGGAN: I'm asking if he knows.
6 It's not speculation.

7 A. The name sounds familiar, yeah.

8 MR. MARGOLIN: You didn't ask if he
9 knows, Tim. You said is it. If you want to ask him
10 if he knows, ask him. Don't say it as a statement
11 of fact.

12 Q. I'd like to show you what we've
13 marked as Exhibit JLS Exhibit 12?

14 (Exhibit JLS-12, Note sale and
15 assignment agreement, is received and marked for
16 identification.)

17 A. Yes.

18 Q. Have you seen this document before?

19 A. I believe so, yeah.

20 Q. What's your understanding of this
21 document?

22 A. That was the document that Seth
23 Levine was going to be making and buying using my
24 loan money to buy it.

25 Q. If you look down here, paragraph 1 is

1 the purchase price of \$1,550,000?

2 A. Yeah.

3 Q. The assignee at the top is who?

4 A. Norse -- let me see the agreement.

5 Norse.

6 Q. Norse Holdings, LLC?

7 A. Yes.

8 Q. So Norse Holdings, LLC was going to
9 purchase a loan from Provident Bank and part of the
10 purchase price was going to be funded by J&J
11 Capital?

12 A. Yes.

13 MR. MARGOLIN: Counsel's testifying,
14 but you can answer.

15 Q. I'd like to go back to the
16 participation agreement that we marked as JLS
17 Exhibit 11. The next paragraph says that the
18 assignees are to assign the contract we just looked
19 at to River Funding. Do you see that there, second
20 whereas?

21 A. Yeah.

22 Q. What was the purpose of that?

23 A. I don't know. It was just a Seth
24 Levine purpose. He might know it.

25 Q. But you don't know?

1 A. No.

2 Q. At the end of the day, was it your
3 understanding that River Holdings would be the
4 entity that would take title to the note and
5 mortgage?

6 MR. MARGOLIN: Calls for speculation.
7 Counsel is testifying. Answer it.

8 A. I don't know. I don't know.

9 Q. If we go to the next paragraph, it
10 says Seth Levine is authorized and empowered as
11 managing member of Norse and River to enter into
12 this agreement and to bind the LLC and is further
13 authorized to mortgage properties that are
14 identified there. Do you see that?

15 A. Yeah.

16 Q. What's the purpose of that clause?

17 MR. MARGOLIN: Objection, document
18 speaks for itself.

19 A. To have him verify and re-verify the
20 fact that he's empowered to give me the mortgage on
21 those two properties.

22 Q. What do those two properties have to
23 do with this loan?

24 A. That was the loan was for the two
25 properties that -- they were the collateral for the

1 loan.

2 Q. Were the owners of those two
3 properties getting any of the cash --

4 MR. MARGOLIN: Objection, calls for
5 speculation.

6 Q. -- from the loan?

7 A. No. Seth Levine was going to be
8 getting it in his entity, and he would be using it
9 for the purchase. Those two properties were being
10 put up as collateral for the loan.

11 Q. If I go to the next paragraph, it
12 says assignees are in need of \$750,000. Is the
13 purpose of that, and it says in funding to qualify
14 with Provident Bank. What does that mean?

15 MR. MARGOLIN: Calls for speculation.

16 A. I don't know. I think it means for
17 the purchase of the loan.

18 Q. Do you know what the words "to
19 qualify with Provident Bank" means?

20 MR. MARGOLIN: Objection. Counsel,
21 he's testified multiple times that this is a Levine
22 transaction, so he doesn't know exactly what Levine
23 wanted to do with it.

24 MR. DUGGAN: That's not his
25 testimony. He prepared this document. He prepared

1 it. I'm asking him -- we don't have speaking
2 objections. You can object to form. This is a
3 deposition under New Jersey court rules. I'm asking
4 him -- federal rules, as the drafter of this
5 agreement and as a signer of this agreement, I'm
6 asking him what this provision means. If he doesn't
7 know, he can say that.

8 Q. Let me ask it again. On the whereas
9 clause that starts with "assignees are in need of
10 \$750,000 in funding to qualify for Provident Bank."
11 What does qualify for Provident Bank mean?

12 A. You have to have the money available
13 to make the payments.

14 Q. It's not just to show good faith
15 funds?

16 A. No, not to pay all the good faith
17 funds. It's to make the payment for the purchase,
18 towards the purchase.

19 Q. Now I'm going on to the third page.
20 Do you see where it says, "now therefore it's
21 mutually agreed"?

22 A. Yeah.

23 Q. The first sentence says, "investors
24 shall invest." Why did you use the words investors
25 shall invest as opposed to investors shall loan?

1 A. I don't know. It was a little bit of
2 poor wording, I think. This was a slap dash type of
3 arrangement, agreement. He had to -- I think he had
4 a deadline. He had a time of the essence deadline,
5 and this agreement was sort of prepared on the fly
6 and on the run passed back and forth with the
7 signatures, so that might have been a poor choice of
8 wording.

9 Q. If I go to paragraph No. 2, says,
10 "assignees shall repay." Do you see that there?

11 A. Yeah.

12 Q. "Shall repay 750,000 with a 10
13 percent return of \$75,000." Do you see that there?

14 A. Yes.

15 Q. That's correct? Those were the
16 terms?

17 MR. MARGOLIN: Objection, document
18 speaks for itself.

19 A. Yeah.

20 Q. And that is the payment of both of
21 principal and the 10 percent is due February 10,
22 2019, correct?

23 A. I'm sorry, repeat that question? My
24 mind wasn't focusing on it. I was reading
25 something.

1 Q. If I'm on paragraph 2 --

2 A. Yeah.

3 Q. -- it says, "assignees shall repay
4 the full principal of \$750,000 together with a 10
5 percent return of \$75,000 on or before February 10,
6 2019. Do you see that there?

7 A. Yeah.

8 Q. And the loan, if we go up to the top,
9 this agreement's dated January 15, 2019. Do you see
10 that there?

11 A. Yeah.

12 Q. So if I read this correctly, this was
13 a short-term loan of approximately 26 days to be
14 repaid to the investors by February 10, 2019 with
15 the 10 percent return, correct?

16 A. That was the representation. That
17 was the hope, yeah.

18 Q. But that was the term of the
19 transaction that's set forth in this agreement?

20 A. Well, it allows for it to continue in
21 the event of non-repayment by that date, yeah.

22 Q. So the initial term was 26 days to
23 get a return of the principal and \$75,000, correct?

24 A. Yeah.

25 Q. Then if I go further down, I look at

1 paragraph 4, it says, "Norse shall assign the
2 interest in the agreement with Provident Bank to the
3 investors." Do you see that there?

4 A. Yes.

5 MR. MARGOLIN: Could we take a
6 five-minute break after you finish your question?
7 Then we'll take a break.

8 MR. DUGGAN: I just wanted to say
9 when we take breaks, you know, Mr. Tepfer, you are
10 not allowed to speak with your attorney about the
11 deposition during the break. Do you understand
12 that?

13 THE WITNESS: Yeah.

14 Q. If I look at paragraph 4, Norse is to
15 assign the contract to investors, do you see that
16 there?

17 A. Yes.

18 Q. Earlier on, I'm going up to the
19 second whereas, it says, "the assignee's are to
20 assign the contract to River." Do you see that
21 there?

22 A. Yes.

23 Q. Do you know why they have it assigned
24 to River but also assigned from Norse to investors?

25 A. Well, I don't know why he had it

1 assigned to River. I don't know. That was the
2 entity that he wanted to ultimately go to, but the
3 assignment to investors is only like as conditional
4 collateral besides for the mortgage, for the loan.
5 It would just be like a collateral assignment. I
6 never got the collateral assignment. He never gave
7 it to me.

8 Q. Do you know if he ever purchased the
9 loan from Provident?

10 A. No.

11 MR. MARGOLIN: Tim, I thought we were
12 doing a five-minute break. If you have one more
13 question to ask.

14 Q. If I go down to paragraph 5 --

15 MR. MARGOLIN: I thought we were only
16 doing -- can we take a break?

17 MR. DUGGAN: You can take a break.

18 MR. MARGOLIN: All right, five
19 minutes, four minutes. I'm going to get some water.

20 MR. DUGGAN: Just do it quick. We'll
21 take a break. I'd tend to make this the last break.

22 (A brief recess is taken.)

23 MR. DUGGAN: One other comment I want
24 to make, it seems that I hear whispering in the
25 background here. There can't be discussions between

1 counsel and the witness during the deposition. I'm
2 not sure what it is I would ask that there's no
3 communication whatsoever while you are in the
4 conference room or we are just going to need the
5 video to zoom back out so we can see all the people
6 in there.

7 MR. MARGOLIN: The video hasn't moved
8 unless the computer moved.

9 MR. DUGGAN: I'm not saying the
10 video's moved. When you have people that are live
11 and they are in the room and we hear whispering in
12 the background, I don't know what's going on. I
13 want to make sure that -- you know, this is no
14 different than all of us sitting in the conference
15 room looking at each other and no communication with
16 the witness while --

17 MR. MARGOLIN: People leave
18 conference rooms during physical depositions. I
19 took plenty of those too. It's not like everyone is
20 locked in the room and you must monitor at all
21 times. It's not that different.

22 MR. DUGGAN: It is absolutely
23 different. I don't want any communications and
24 prefer there's no whispering.

25 Q. If we can go to paragraph 5 of the

1 participation agreement?

2 A. Yeah.

3 Q. Do you see that there?

4 A. Yeah.

5 Q. Is this the paragraph you were
6 talking about earlier that allows it to be extended?

7 A. Well, and the mortgage document
8 itself allowed for it to be extended.

9 Q. I'm asking about the participation
10 agreement.

11 A. It was all one set of documents, but
12 okay. Let me see. Yes.

13 Q. So if I have this right, there's the
14 ability to have a six-month extension, correct?

15 A. In this participation agreement, yes.

16 Q. And what's the annualized interest
17 during the extension period?

18 A. It says 20 percent.

19 Q. And this is an extension that brings
20 it out six months to August 10, 2019?

21 A. Yes.

22 Q. That's when the entire principal
23 75,000 plus the 20 percent interest would be due?

24 A. Yes.

25 Q. So the original loan was for 26 days

1 with a \$75,000 return with the option to be able to
2 extend six months with 20 percent interest, correct?

3 A. Well, the 75,000 was sort of an
4 origination fee, and that was just added into the
5 loan and to be collateralized as part and parcel of
6 the note and mortgage, because he did not pay it at
7 the time of the granting of the loan, at the time of
8 the execution of this agreement, so that 75 was
9 added on into -- to be collateralized by the note
10 and the mortgage.

11 Q. Well, if I look in here, it says the
12 set amount represents the \$75,000 invested plus --
13 \$750,000 invested plus the \$75,000 return?

14 A. Yeah.

15 Q. And then the next sentence is 20
16 percent per annum on top of that, correct?

17 A. 20 percent per annum on top of that,
18 yeah. That's if the 75 was not paid back.

19 Q. Right. So you get 20 percent on
20 \$825,000, correct?

21 A. It would be 20 percent, umm, 875, if
22 it was not paid back.

23 Q. Was it paid back?

24 A. Well, no, it was not paid back.

25 Q. I'd like to go to paragraph 7. Do

1 you see that there?

2 A. Yes.

3 Q. The 750 was to be wired to Norse
4 Holdings. Do you see that there?

5 A. Yeah.

6 Q. Is that correct?

7 A. Yeah.

8 Q. That is correct?

9 A. Say it again? I'm sorry.

10 Q. The 750,000 was to be wired to an
11 account in Norse Holdings. Do you see that there?

12 A. Yeah.

13 Q. Is that correct? What was supposed
14 to happen?

15 A. Yeah, yeah.

16 Q. And the next sentence?

17 A. Or any other account, or any other
18 account that he would specify.

19 Q. What did he specify?

20 A. I don't recall where I sent the wire
21 to. I don't recall what entity it was. I'd have to
22 look at the wire.

23 Q. Do you see the next sentence where it
24 says, "It is specifically represented that the funds
25 shall remain on deposit not to be used for any

1 purpose and shall be returned to investors with a 10
2 percent return either upon the closing of the
3 agreement," and then it continues.

4 Do you see that sentence there?

5 A. Yeah, I think that's a misread -- a
6 mis -- should not be used for any other purpose, I
7 should have said, but all right.

8 Q. Well, it says it has to stay in the
9 bank account and can't be used. Do you see that
10 there?

11 A. I see that's what it says, but the
12 intent was it not be used for any other purpose
13 other than the purchase of the mortgage. That was,
14 again, sloppy, rushed draftsmanship.

15 Q. Again -- and you Mr. Levine's counsel
16 prepared this document, correct?

17 A. Yeah, I did probably. I did most of
18 the preparing.

19 Q. So you prepared the participation
20 agreement that we're looking at that's marked as
21 Exhibit JLS Exhibit 11?

22 A. Yes. May have been some comments and
23 some changes made by Mr. Selevan. I don't remember
24 specifically, but I prepared it.

25 Q. Do you know why this is called a

1 participation agreement as opposed to a loan
2 agreement?

3 A. Well, there was the participants of
4 the agreement were all of the entities of Seth
5 Levine and also maybe to, you know, this was a loan
6 being given by an Orthodox Jew to an Orthodox Jew,
7 and there are biblical prohibitions about charging
8 interest and things like that, so there's something
9 called a heteriska that sort of cloaks, creates a
10 legal fiction that allows the interest to be charged
11 and the lender has to be called, you know, again, as
12 a fig leaf as a participant rather than just a
13 lender. So as a participant, you are entitled to
14 take interest from a fellow observer Orthodox Jew.

15 Q. So the way this was structured from
16 a, I'll call it a religious point of view, was as an
17 investment between J&J Capital and Seth Levine and
18 his two entities to purchase the note, correct?

19 A. As part of the I'll call it the
20 religious requirement, to meet the religious
21 requirement. It was a loan. It was a loan. It was
22 a mortgage loan, but, you know, it was dressed up
23 this way simply for -- in line with the heteriska,
24 which is a document that accompanies
25 interest-bearing loans.

1 Q. I'd like to show you what we've
2 marked as Exhibit JLS-15.

3 (Exhibit JLS-15, Personal Guarantee of
4 Seth Levine, is received and marked for
5 identification.)

6 Q. When I increase the size on my
7 screen, does it increase on your screen?

8 A. Yeah, that's very helpful.

9 Q. This is Exhibit JLS-15, and I'm down
10 at the signature page if you see it there, and then
11 I'll go back up to the top. Do you recognize this
12 document?

13 A. Yes.

14 Q. What is this document?

15 A. This is a personal guarantee of Seth
16 Levine for repayment of the loan.

17 Q. He's the only guarantor on this loan,
18 correct?

19 A. Yeah, I believe so.

20 Q. Okay.

21 A. I believe so.

22 MR. MARGOLIN: Document speaks for
23 itself.

24 Q. This is the only guarantee that was
25 produced to us, so is this the only guarantee that

1 J&J has?

2 A. Yes, I believe so.

3 Q. In this case, Mr. Levine is
4 guaranteeing the \$825,000 loan that we just reviewed
5 in the participation agreement, correct?

6 A. Yeah.

7 Q. Mr. Levine signed the participation
8 agreement?

9 A. Yes.

10 Q. There's no other guarantors, correct?

11 A. I believe not.

12 Q. I would like to show you what we've
13 marked as Exhibit JLS Exhibit 6. Do you see that
14 there?

15 (Exhibit JLS-6, Listing of members of
16 Lenox Temple, is received and marked for
17 identification.)

18 A. Yes.

19 Q. Are those the owners of Lenox Temple?

20 MR. MARGOLIN: Calls for speculation.
21 Document speaks for itself. Document out of
22 context. Answer if you understand.

23 A. It's a listing of it. I didn't
24 prepare that listing. It's a listing of the members
25 of Lenox Temple.

1 Q. Do you know who the members of Lenox
2 Temple are?

3 A. Definitively? No, I know only what
4 was represented by Mr. Levine.

5 Q. Do you know who the members of
6 Teaneck Plaza are, Teaneck Plaza Ventures, LLC?

7 A. You just put an exhibit on.

8 Q. I'm just asking you. Do you know?

9 A. I know what he represented to me.

10 Q. What did he represent to you?

11 A. You took it off, so I think that
12 would have had himself and his wife on it.

13 Q. I'm going to show you what we've
14 marked as Exhibit JLS Exhibit 7.

15 (Exhibit JLS-7, Listing of members of
16 Teaneck Plaza Ventures, LLC, is received and marked
17 for identification.)

18 Q. Does that refresh your recollection
19 of who the members of Teaneck Plaza Ventures, LLC
20 are?

21 A. That refreshes my recollection of
22 what he represented to me, yes.

23 Q. Do you know who the members of Norse
24 Holdings were?

25 A. You have to show me an exhibit if you

1 have any such exhibit.

2 Q. I'm just asking you if you know?

3 A. Off the top of my head at this
4 moment, no. I know Seth Levine was and, you know,
5 he was certainly the signatory and the manager and
6 the managing member or whatever, but I don't know
7 the specific percentages. I don't know that one
8 unless I see an exhibit.

9 Q. Do you know how many entities Mr.
10 Levine has an interest in?

11 A. No. No.

12 Q. Do you know how many of those
13 entities own real estate?

14 A. No.

15 Q. Do you know the names of any of the
16 other entities?

17 A. Other than what's been listed in the
18 context of this litigation?

19 Q. Well, I'm asking -- let me rephrase
20 it.

21 Do you know the names of any of the
22 entities that Mr. Levine has an interest in?

23 A. Not off the top of my head.

24 MR. MARGOLIN: Calls for speculation.

25 A. Not off the top of my head at this

1 moment. He was partial to the name of Norse for
2 some reason. He must have watched a Viking movie as
3 a child. He liked the word Norse. I saw some
4 variations of Norse, Norse Holdings, Norse I, Norse
5 II, I had seen that on other deals.

6 MR. MARGOLIN: Off the record for a
7 second?

8 (A discussion takes place off the
9 record.)

10 Q. Do you have any firsthand knowledge
11 of the ownership or assets of any of the other Seth
12 Levine entities?

13 A. No, just firsthand from what he
14 provided me.

15 Q. And when you say "what he provided
16 me," it was for the transactions that we are
17 reviewing now involving Lenox Temple, Teaneck Plaza,
18 Norse Holdings and River?

19 A. Yes.

20 Q. You don't have any other knowledge
21 about the ownership, his interest or assets of any
22 of the other entities he may have an interest in?

23 A. No, not at this time, no.

24 Q. I'd like to show you what we marked
25 as Exhibit JLS Exhibit 17. Do you see that there?

1 A. Yes.

2 (Exhibit JLS-17, Mortgage note, is
3 received and marked for identification.)

4 Q. What is this document?

5 A. That's the mortgage note.

6 Q. This -- and who are the borrowers on
7 this note?

8 A. Teaneck Plaza and Lenox Temple.

9 Q. Did either Teaneck Plaza Ventures or
10 Lenox Temple, LLC get \$825,000 from J&J Capital?

11 MR. MARGOLIN: Calls for speculation.

12 A. Did they ultimately get it? Or did I
13 wire it? I can tell you who I wired the funding to.

14 Q. Well, let me do this: I am going to
15 pull up what we marked as Exhibit JLS 19. Do you
16 see that on the bottom?

17 (Exhibit JLS-19, Wire confirmation, is
18 received and marked for identification.)

19 A. Yes.

20 Q. Do you recognize this document?

21 A. It's a wire confirmation.

22 Q. Is this for this loan?

23 A. Yes.

24 Q. Who's the recipient of the wire?

25 A. Norse Holdings, LLC.

1 Q. And do you know why?

2 A. Yes, that was the request that Mr.
3 Levine had sent it to this entity.

4 Q. When you say "this entity," that's
5 Norse Holdings, LLC?

6 A. Yes.

7 Q. Norse Holdings, LLC was the entity
8 that was under contract to purchase the Provident
9 Bank loan?

10 MR. MARGOLIN: Calls for speculation.

11 A. You showed me that contract earlier.
12 I think it was Norse. If you show me the document
13 again, I can --

14 Q. Okay. I would like to show you again
15 what we marked as JLS Exhibit 12. Do you see that
16 document?

17 A. Yes, it was Norse Holdings.

18 Q. So Norse Holdings was the entity that
19 was to buy the loan from Provident Bank, correct?

20 A. Yes.

21 Q. And the money for that purchase was,
22 in fact, wired to Norse Holdings, LLC, correct?

23 A. Yes.

24 Q. So looking at the mortgage note for
25 \$825,000, it's clear that Teaneck Plaza Ventures and

1 Lenox Temple did not receive \$825,000 from J&J
2 Capital?

3 MR. MARGOLIN: Objection, counsel is
4 testifying. Asked and answered. He's already
5 stated what the question is. He's already stated
6 what he knows. Absolutely objectionable.

7 MR. DUGGAN: Stop, stop, Yan.

8 MR. MARGOLIN: Yelling stop is not
9 going to make me stop.

10 MR. DUGGAN: I'm going to re-ask the
11 question.

12 MR. MARGOLIN: I will object to the
13 same exact question.

14 Q. Did Teaneck Plaza Ventures get
15 \$825,000 from J&J Capital?

16 MR. MARGOLIN: The same objections,
17 please, on the record. That question makes no
18 sense. Ask a different question. He's answered the
19 question as to where the money was wired. He's not
20 Seth Levine. Ask that question to Seth Levine.

21 MR. DUGGAN: No.

22 Q. Do you have any knowledge whether or
23 not Teaneck Plaza Ventures received \$825,000 from
24 J&J Capital?

25 A. From J&J Capital? Yes, I have

1 knowledge of the money that was wired.

2 Q. To Teaneck Plaza Ventures, LLC?

3 A. No, not to Teaneck. It was wired to
4 Norse.

5 Q. Correct. I'm asking a specific
6 question. Do you have any knowledge whether Teaneck
7 Plaza Ventures received \$825,000 from J&J Capital
8 Realty ever?

9 A. They received the wire, the amount of
10 the wire that was indicated and they -- as
11 additional collateral for the original \$75,000
12 origination fee, they stood there to guarantee that
13 the mortgage and the note stood there to
14 collateralize that additional 75 to 750 and 75 is
15 the 825.

16 Q. That's not my question.

17 A. That's the answer though. They
18 didn't get 825.

19 Q. Correct.

20 A. There was no wire for 825. There was
21 a wire for the net or the 750 and the obligation,
22 undertaking the obligation to pay the additional 75.

23 Q. The wire went to Norse Holdings,
24 correct?

25 A. Yes.

1 Q. And no money was wired to Teaneck
2 Plaza Ventures, correct?

3 A. Yeah, correct. It was wired to the
4 end at this indicated.

5 Q. No money was wired to Lenox Temple,
6 LLC, correct?

7 A. It was not wired to the party putting
8 up the collateral, the mortgage collateral, to Lenox
9 or to Teaneck.

10 Q. So when I look at Exhibit JLS Exhibit
11 17, which is a mortgage note, neither borrower that
12 are set forth on this note received any money from
13 J&J Capital, correct?

14 MR. MARGOLIN: Objection, this
15 document speaks for itself, calls for speculation.
16 You can answer the question.

17 A. The specific entities that put up the
18 collateral didn't guarantee -- to guarantee the loan
19 did not receive the money. They put up the
20 collateral and the entity, the Seth Levine entity of
21 Norse is the one that received the wire.

22 Q. Going down, the amount of the
23 obligation referenced in this note is \$825,000 with
24 20 percent interest, correct?

25 A. Yes.

1 Q. That represents the \$750,000 loan,
2 the \$75,000 that was to be repaid as the 10 percent
3 return, plus 20 percent interest on the combined
4 amount, correct?

5 MR. MARGOLIN: Document speaks for
6 itself.

7 A. Well, the 10 percent wasn't returned.
8 It was 10 percent was the origination. So but this
9 collateralized and included all of the amount.

10 Q. I'd like to refer you to a document
11 we marked as Exhibit JLS Exhibit 14 and ask you if
12 you recognize this document.

13 (Exhibit JLS-14, Mortgage, is received
14 and marked for identification.)

15 A. Yes.

16 Q. Did you prepare this document?

17 A. Yes.

18 Q. What is this document?

19 A. That's the mortgage covering the two
20 parcels.

21 Q. It's the same \$825,000?

22 A. Yes.

23 Q. Who are the borrowers under this
24 mortgage?

25 A. The borrowers were Teaneck Plaza and

1 Lenox Temple.

2 Q. They are the same borrows from the
3 promissory note we just looked at?

4 A. Yes.

5 Q. So this mortgage secures the loan
6 obligations evidenced by the promissory note in the
7 sum of \$825,000 that we just looked at?

8 A. Yes.

9 Q. When I say the note we just looked
10 at, it's Exhibit JLS Exhibit 17?

11 A. Yes.

12 Q. I'd like to show you a document that
13 question identified as JLS Exhibit 18.

14 (Exhibit JLS-18, Document, is received
15 and marked for identification.)

16 A. Yes.

17 Q. Did you prepare this document?

18 A. Yes.

19 Q. Is that your signature on the
20 document?

21 A. Yes.

22 Q. What's the purpose of this document?

23 A. As additional collateral, you know,
24 that it's part of my, my loan document package most
25 often, that he would execute an assignment of shares

1 and resignation Seth Levine and the other members,
2 that in the event of default, I would give him
3 notice and I could take these shares and, so to
4 speak, possibly short circuit the foreclosure
5 process. Doesn't always work, but it's an
6 additional collateral security.

7 Q. Do you see the first sentence where
8 the mortgage is placed in escrow?

9 A. Where does it say -- this letter
10 confirms, hold it. Mortgage assignment shares with
11 enunciation -- yes, I see that.

12 Q. So the mortgage was to be held in
13 escrow by you pending an event of default?

14 MR. MARGOLIN: Calls for speculation.
15 Answer if you can.

16 A. Yeah, there was a specific request
17 that I hold the mortgage for a couple of days until
18 he finishes and repays, because there was a
19 short-term loan. It was anticipated as a short-term
20 loan. Here we are three years later and nothing has
21 happened, but it was anticipated to be a short-term
22 loan, and I was going to hold the mortgage and not
23 record it unless there was a default or that there
24 was something untoward came up.

25 Q. If I look at the second paragraph, it

1 says, in event of default, upon 60 days' written
2 notice with an opportunity to cure, then the
3 documents would be released from escrow, correct?

4 A. Yeah.

5 Q. Did you ever send a notice of
6 default?

7 A. I don't recall. I think by the
8 time -- I think his office was closed at some point
9 in time shortly thereafter. I don't remember
10 exactly.

11 Q. I'll represent that no notice of
12 default was produced in discovery. Does that
13 refresh your recollection?

14 A. If it was not produced, I would say
15 that I could not find one, that I did not provide
16 one.

17 MR. MARGOLIN: I believe I sent one
18 later once the implosion occurred, once I was
19 retained.

20 A. There was an occurrence, the office
21 was closed, the phones weren't being answered, the
22 FBI raided his office, I don't know who what or why
23 or where to send anything or contact. I couldn't
24 contact anyone.

25 Q. So J&J never sent a 60-day written

1 notice with a right to cure to any of the parties to
2 the participation agreement, note or mortgage?

3 A. There was no formal written notice.
4 They were not to be found.

5 Q. When did you try to -- when did J&J
6 try to first record the mortgage?

7 A. I have to refresh -- I have to see
8 some document that will refresh me on the date. I
9 don't know exactly when it was. It was sometime
10 after the default and the implosion and the scandal
11 that started spreading through the grapevine in the
12 neighborhood.

13 Q. So J&J --

14 MR. DUGGAN: No.

15 MR. MARGOLIN: I have to object.

16 Q. J&J Capital -- so J&J Capital did not
17 try to record the mortgage until after the FBI
18 raided Mr. Levine's office?

19 MR. MARGOLIN: Objection. Counselor,
20 there are emails that were produced to you.

21 MR. DUGGAN: I'm asking his firsthand
22 knowledge.

23 MR. MARGOLIN: You are asking --
24 trying to support perjury because you know there
25 were emails that were different?

1 MR. DUGGAN: I'll ask the questions.

2 MR. MARGOLIN: Please don't ask --

3 MR. DUGGAN: No.

4 Q. So your testimony was that you tried
5 to record the mortgage after the FBI came in and
6 raided, correct?

7 A. I can't say that specifically. I
8 don't have a clear recollection of the chronology of
9 dates.

10 Q. Do you know whether or not you tried
11 to record it within a month or two of the closing?

12 A. Perhaps, yeah. Perhaps, if there's
13 some email that shows a date, then I would have to
14 see that.

15 Q. I'd like to show you what we've
16 marked as Exhibit JLS Exhibit 21?

17 A. Yes.

18 Q. It's a series of emails that were
19 produced in discovery?

20 (Exhibit JLS-21, Series of emails, is
21 received and marked for identification.)

22 MR. MARGOLIN: Are you presenting
23 these are the first emails of their kind?

24 MR. DUGGAN: I'm not presenting the
25 witness anything.

1 MR. MARGOLIN: The objection is the
2 witness is being shown an exhibit out of context as
3 part of a larger chain that is not being shown.

4 MR. DUGGAN: I don't understand that
5 objection.

6 Q. I'm showing you a document. Do you
7 recognize this document?

8 A. It's a part of the email chain that I
9 was sending to, to a title company, I think, yeah.

10 MR. MARGOLIN: One of a series of
11 emails.

12 A. Madison Title Company.

13 Q. What was the purpose of this email?

14 A. It says we were sending them the
15 mortgage for recording.

16 Q. Do you know whether this was before
17 or after an event of default?

18 A. I don't know. It must have been
19 after. I assume it was after.

20 Q. Do you have a payment history for the
21 loan?

22 A. Not currently at my fingertips.

23 Q. (REQUEST) I don't recall one being
24 produced in discovery. We request that you produce
25 a payment history, and your counsel and I can follow

1 up on that.

2 MR. MARGOLIN: Yes, no problem. If
3 you could, for my own sanity, if you can record any
4 like ongoing or extra demands and then email them to
5 me at the end, that would be super helpful, because
6 I'm not listing them. My computer is occupied so
7 I'm not taking them down.

8 Q. I'd also like to show you what we've
9 marked as JLS Exhibit 20.

10 (Exhibit JLS-20, Proof of mailing, is
11 received and marked for identification.)

12 Q. Do you see that here?

13 A. Yes.

14 Q. This was produced in discovery and
15 the dates April 23, 2019, do you see that there?

16 A. Yeah.

17 Q. It says reference record description
18 for properties Levine?

19 A. Yes.

20 Q. And this is sent by you?

21 A. To Madison, yeah.

22 Q. It was identified in production as
23 proof of mailing in April 2019?

24 A. That's what it seems to be.

25 Q. Is this an attempt also to record the

1 mortgage in April of 2019?

2 A. This is dated April.

3 Q. Right. So is this an effort to try
4 to record the mortgage in April of 2019?

5 A. I believe so.

6 Q. Okay.

7 A. I believe so.

8 Q. In April of 2019, in June of 2019,
9 based upon the emails and this FedEx, you were
10 trying to have the mortgage that we looked at
11 earlier recorded, correct?

12 A. I must say that I don't know which of
13 these included the Lenox Temple and the, you know,
14 the mortgages on this or may have included the
15 mortgages that had been previously closed by, with
16 Seth Levine that the mortgage loans had previously
17 entered, there were two others and I don't know
18 which package contained which.

19 Q. I would like to show you, I need to
20 show you two documents which are the
21 interrogatories, so I'd like to show you this
22 Exhibit JLS Exhibit 3.

23 (Exhibit JLS-3, Interrogatories, is
24 received and marked for identification.)

25 Q. I ask you if you've seen this

1 document and whether you recognize it.

2 A. Yes, I've seen it.

3 Q. Did you review the questions that
4 were in this document and provide answers?

5 A. Yes.

6 MR. MARGOLIN: Is this the federal or
7 state, Tim?

8 MR. DUGGAN: These are the ones you
9 answered, so these are the state ones.

10 MR. MARGOLIN: What was the date of
11 our response to this?

12 MR. DUGGAN: I'll show that next.

13 Q. Here's the response. I don't have
14 the signature page. I think you provided a
15 signature page on these rog answers as a separate
16 document.

17 I'll ask you to take a look at these
18 interrogatory answers and see if these are the
19 interrogatory answers to those questions?

20 MR. MARGOLIN: After he answers this
21 question, I need to consult with my co-counsel, so
22 we are going to take a three-minute break.

23 A. I recognize these answers. I'm not
24 reading each and every one now, but yeah.

25 Q. I'd like to go through these rog

1 answers.

2 MR. MARGOLIN: So we are going to
3 take a three-minute break. I'm going to speak to
4 Barry and we'll get back to you.

5 MR. DUGGAN: What do you need a break
6 for? It's in the middle of the deposition.

7 MR. MARGOLIN: I'm speaking to
8 co-counsel. I'm allowed to do this. There are
9 certain legal issues coming up here and I need to.

10 MR. DUGGAN: We'd like to keep the
11 camera on and keep the witness there.

12 MR. MARGOLIN: I don't mind if the
13 witness sits there. This is not a short deposition.
14 This is going to be a very long deposition. Don't
15 ask him any questions obviously, but he can stay
16 here if he wants, unless he's going to the bathroom.
17 That's fine.

18 (A brief recess is taken.)

19 THE COURT REPORTER: Mr. Bowen, are
20 you going to be ordering a copy of today's
21 transcript?

22 MR. BOWEN: Yes.

23 MR. MARGOLIN: Tim, we are here for a
24 federal deposition under the special masters
25 allocation. This is not --

1 MR. DUGGAN: I'm showing you a
2 different exhibit. It's basically the same. I'm
3 changing the exhibit to the interrogatories from the
4 federal case.

5 MR. MARGOLIN: That's fine. I was
6 going to object to something -- to that. I'm glad
7 you did that. That obviates my objection. We're
8 good.

9 Q. I'd like to show you what we've
10 marked as Exhibit JLS Exhibit 23.

11 (Exhibit JLS-23, Interrogatories from
12 federal case, is received and marked for
13 identification.)

14 Q. Which are the interrogatories from
15 the federal case, and then what we showed you
16 earlier, which is Exhibit 4, which are the answers
17 to the interrogatories in the federal case. Do you
18 see that there?

19 (Exhibit JLS-4, Interrogatories, is
20 received and marked for identification.)

21 MR. MARGOLIN: No, we just see you,
22 Tim, but I assume you are going to bring it up in a
23 second, share screen or whatever it is.

24 Q. So this is JLS-4.

25 MR. MARGOLIN: These are the ones we

1 answered about a month ago?

2 MR. DUGGAN: Yes. Then here is the
3 actual questions. So we can put it back and forth
4 if we need to.

5 Q. I'd like to go through the answers,
6 and if we could go to answer No. 2, do you see where
7 it says, "Mr. Tepfer, agent of J&J, dealt personally
8 with Mr. Levine and negotiated the note, mortgage
9 and attendant documents to form the basis of the
10 claim."

11 Do you see that there?

12 A. Yes.

13 Q. You testified earlier that the broker
14 was also involved?

15 A. Yes.

16 Q. So it wasn't just you his agent, it
17 was also the broker?

18 A. Yeah, he may have interfaced maybe
19 delivered some communications back and forth.

20 Q. If I go down to No. 11, it says, "no
21 communications regarding JLS."

22 Do you see answer 11?

23 A. Yes.

24 Q. At the time J&J made the loan, the
25 J&J loan, was J&J aware that JLS was also in

1 negotiations to make a separate loan?

2 A. No.

3 Q. When J&J Capital made its loan, the
4 J&J Capital loan that we are here on today, did J&J
5 Capital have any knowledge of the existence of JLS?

6 A. No.

7 Q. And then it says you learned about
8 the relationship in late 2019. Do you see that
9 there?

10 A. I see that, yeah.

11 Q. Do you recall how you found out about
12 JLS?

13 A. No. I think that perhaps through my
14 counsel. I don't know who JLS is. I don't know any
15 of the parties or participants, and I never heard of
16 them other than in the context of some legal
17 documents of this case.

18 Q. If I could go to paragraph 16, the
19 second part of the second sentence says, "but the
20 documents in the case and the New Jersey law allows
21 funds sent to one cross stream entity and a family
22 of related entities to be sent funds credit against
23 all entities in the family," do you see that there?

24 A. Yeah.

25 Q. What does that mean?

1 A. The means that the fact that I wired
2 -- they are all Seth Levine entities, and the fact
3 that I wired to Norse was, is deemed as, and Lenox
4 and Lenox Temple are the ones that gave me the
5 collateral. I didn't wire funds to each and every
6 entity. I wired it to the Norse entity and they are
7 all part of the Seth Levine group of entities, so he
8 directed me to wire it to Norse and I wired it to
9 Norse, but it was for collateral I got for the note
10 and mortgage on Lenox and Temple -- Lenox Temple.

11 Q. If I go to Paragraph 19 --

12 A. Yes.

13 Q. Says consideration received -- let me
14 withdraw that. On paragraph 21 --

15 A. Yes.

16 Q. -- answer, the third sentence starts
17 with "the loan was always to the entire group."

18 A. Of entities, yes.

19 MR. MARGOLIN: This is 19?

20 MR. DUGGAN: This is 21.

21 MR. MARGOLIN: Starting with --

22 MR. DUGGAN: Start with the second
23 sentence.

24 Q. It says the two chief entities?

25 A. Yes.

1 Q. Could you read that sentence to
2 yourself?

3 A. Yes.

4 Q. It says Lenox Temple, LLC and Teaneck
5 Plaza, LLC agreed to co-sign the participation
6 agreement. Do you see that there?

7 A. Yes.

8 Q. They didn't sign the participation
9 agreement, did they?

10 A. No, that's a misstatement. They
11 agreed to sign the note and mortgage.

12 Q. If we can go down to answer 24?

13 A. Yes.

14 Q. Can you read that first sentence?

15 A. Yes.

16 Q. So about a month after the loan was
17 made, J&J Capital tried to record the mortgages,
18 correct?

19 A. I don't know which of the mortgages.
20 That happened in February. I don't recall if it was
21 on this loan or if it was on the two previous loans.

22 Q. Well, these interrogatory answers
23 were for this case, and you prepared these answers,
24 correct?

25 A. Yeah but the sentence mentions to

1 record the mortgage and if you can go back to that
2 line? And other mortgages it says, so I can't tell
3 you definitively what went into this FedEx envelope
4 and what went into the other FedEx envelope.

5 Q. I'm showing you the question,
6 question No. 24.

7 A. Yes. Why was the mortgage recorded
8 about nine months after it was executed?

9 Q. Okay. So why was the mortgage that
10 J&J Capital seeks to enforce in this action, right,
11 so do you agree that question 24 relates to the
12 mortgage from this case?

13 A. Yes.

14 Q. And then the answer is, Mr. Tepfer,
15 which is you, sought to have Madison Title record
16 the mortgage in this and other loans with Levine as
17 early as February?

18 A. Yes, I see that.

19 Q. That's a month after the loan?

20 A. Yes, it would be a month after the
21 loan, yes. So I don't know -- I can't tell you
22 whether it was this loan, you know, I don't know
23 what was put into each FedEx envelope, I must say
24 that.

25 MR. MARGOLIN: The interrogatory

1 answers speak for themselves. They were provided at
2 the time when the witness would review documents in
3 his possession.

4 MR. DUGGAN: I'm asking --

5 MR. MARGOLIN: He may not remember
6 them.

7 Q. I'm asking a question. Did you
8 prepare this answer or did your lawyer prepare it?

9 MR. MARGOLIN: Objection,
10 attorney-client, attorney work product.

11 Q. Did you sign the -- these
12 interrogatories based upon your firsthand knowledge?

13 A. I signed the interrogatories, yes.

14 Q. I'm asking you what you meant when
15 you signed the interrogatories for the first
16 sentence in paragraph 24 of your answer?

17 MR. MARGOLIN: Objection. The
18 document speaks for itself.

19 Q. I'm asking for your firsthand
20 knowledge of what that sentence means?

21 A. That sentence means that I started
22 the process of recording Seth Levine mortgages in
23 late February. I don't -- it doesn't specify. In
24 fact, the answer sort of includes a little bit of
25 that ambiguity.

1 Q. Okay. Why do you have ambiguity when
2 the question is pretty direct?

3 A. The question is direct, and not every
4 question can be answered directly. I answered it to
5 the best of my knowledge that I started, I sent a
6 Seth Levine mortgage out for recording to Madison in
7 this and other loans beginning February. There was
8 another one that followed in April. I don't know if
9 this one was in February or this was in the April.
10 I cannot say that with specificity, and I didn't say
11 it in 24 with any specificity.

12 MR. DUGGAN: I have no further
13 questions.

14 MR. MARGOLIN: I'm assuming Ascend
15 has questions?

16 MS. KLEIN: I also have questions.
17 You can go first, Michael.

18 MR. MARGOLIN: Ascend, JLS has two
19 counsel. Why are we having two different sets of
20 counsel asking questions for one party?

21 MR. DUGGAN: They are different
22 topics.

23 MR. MARGOLIN: I don't think it
24 matters. One second. Could we get the federal rule
25 discussing how many attorneys can ask questions per

1 party? I've never seen in any jurisdiction where
2 multiple attorneys can ask a series of questions for
3 the same party.

4 MR. DUGGAN: When you have co-counsel
5 in a case and they are not duplicative, then you
6 can.

7 MR. MARGOLIN: They are duplicative
8 by nature of representing the same party.

9 MR. DUGGAN: They are not duplicative
10 if they are different topics. I could have taken
11 the list of questions and asked them. It's a
12 different topic.

13 MR. MARGOLIN: My question is not
14 that.

15 MR. DUGGAN: You can object asked and
16 answered is a proper objection.

17 MR. MARGOLIN: What are the federal
18 rules? In every single litigation I've done in any
19 jurisdiction, I've never allowed more than one
20 attorney. In fact, I thought we discussed this
21 already.

22 MR. DUGGAN: We didn't discuss it.

23 MR. MARGOLIN: I don't know whether
24 or not that's even legal. Look, I prefer to have
25 one attorney ask all the questions.

1 MR. DUGGAN: Pull up the federal
2 rules.

3 MR. MARGOLIN: Let's take a look at
4 the federal rules. It wouldn't be the federal
5 rules. It would likely be local district rules.

6 MR. DUGGAN: We don't have -- our
7 local district rules do very little to the Feds on
8 the discovery rules. I would suggest that Michael
9 starts.

10 MR. BOWEN: Let me say, because I
11 hope that these questions won't take too long, but
12 it depends obviously. Let's just begin.

13 MR. MARGOLIN: I was going to ask,
14 I'm sorry, Ms. Klein, what topic are your questions
15 pertaining to? I guess, Mike, I know that you
16 represent the insurer. I think the Eagle line
17 policy is provided in your coverage. Are they
18 different? I don't want to cause a ruckus for
19 nothing.

20 MS. KLEIN: I have like three
21 questions. It's not anything that Mr. Duggan's
22 covered, so I don't think it's really an issue.

23 MR. MARGOLIN: Why not have Sarah go
24 now since they are the same party?

25 MR. BOWEN: That's fine with me. Go

1 ahead, Sarah.

2 MS. KLEIN: That's fine. All right.

3 EXAMINATION BY MS. KLEIN:

4 Q. Good afternoon, sir. My name is
5 Sarah Klein from Becker, Poliakoff. I'm co-counsel
6 for JLS Equities. I have a handful of questions for
7 you. Let me share my screen.

8 MS. KLEIN: Tim, what was the last
9 number of your exhibit?

10 MR. DUGGAN: It was the fed rogs I
11 think was 23. 23.

12 MR. MARGOLIN: Did you use every
13 single exhibit?

14 MR. DUGGAN: No.

15 MS. KLEIN: I know you premarked a
16 bunch of them, so what would be the next number?

17 MR. DUGGAN: JLS Exhibit 24.

18 MS. KLEIN: So I'm going to mark this
19 as JLS Exhibit 24.

20 (Exhibit JLS-24, Federal pleading, is
21 received and marked for identification.)

22 Q. This is on the federal case Docket
23 No. 291. Do you recognize this document, sir?

24 A. Yes.

25 Q. I'm scrolling down to the affirmative

1 defenses.

2 MR. MARGOLIN: This is the same
3 pleading we filed earlier this month?

4 MS. KLEIN: This is J&J's response to
5 JLS's cross-claim, correct?

6 MR. MARGOLIN: So it's not the same
7 thing as earlier. That was our response to Ascend.

8 MS. KLEIN: Correct. This is J&J's
9 response to JLS.

10 MR. MARGOLIN: Yes.

11 Q. Please take a look at affirmative
12 defense No. 5. Read it to yourself and my question
13 is what is the factual basis for this affirmative
14 defense?

15 MR. MARGOLIN: Objection, you can
16 provide basis of fact if you understand it. You
17 cannot give legal opinions or explain the legal
18 theory behind the --

19 A. Let me try and understand this. You
20 want me to try to interpret it?

21 Q. No, I want the factual basis for this
22 affirmative defense, No. 5?

23 MR. MARGOLIN: I object to the
24 question. It's a legal question, but --

25 A. I'm not, I can't answer that

1 question. I can't answer that question.

2 Q. Does J&J allege that JLS knew of it
3 in some fashion?

4 A. I think that's what the words say,
5 constructive, implied or constructive knowledge.

6 MR. MARGOLIN: I think the document
7 speaks for itself, Ms. Klein.

8 Q. Is that based on any particular
9 document?

10 A. I don't know. I don't have the
11 document in front of me.

12 MR. MARGOLIN: I object further and I
13 believe it's inappropriate to ask witness questions
14 about a pleading that is a legal document and it is
15 something that is appropriate for --

16 Q. Please take a look at affirmative
17 defense No. 6. Read it to yourself and let me know
18 the factual basis for it?

19 A. Yes, I read that.

20 Q. What's the factual basis for this
21 affirmative defense?

22 MR. MARGOLIN: The same objection.
23 This calls to his knowledge of what JLS did. He's
24 not his own attorney in this case. This is not a,
25 it's a legal question and a legal theory. If you

1 know or remember what you think it might be, you may
2 answer, but otherwise, I object.

3 A. I can read it and understand it,
4 because I wasn't in law school that long ago. I was
5 there only 45 years ago, so it says.

6 Q. What's the factual basis?

7 A. Excuse me?

8 Q. What's the factual basis for
9 affirmative defense No. 6?

10 MR. MARGOLIN: Same objections and
11 same --

12 A. I don't have that at my fingertips.
13 I'm not aware of it at this time.

14 Q. Please take a look at affirmative
15 defense No. 11 and let me know the factual basis for
16 it?

17 A. Well, they specify here that land
18 records --

19 MR. MARGOLIN: Before you -- same
20 objection as last time, say discussion of pleadings
21 that is inappropriate for depositions, same
22 questions are more appropriate to a lawyer than
23 asking him. Asking him information that's outside
24 of his knowledge. That having been said, he can
25 answer if he can.

1 A. I can say that there are land records
2 that indicated that Seth Levine was signing on
3 behalf of Lenox Temple, and these were ratified and
4 accepted by JLS several years before our
5 transactions, so I believe so that they are -- they
6 allowed that implied authority, actual authority on
7 behalf of Seth Levine to sign on behalf of those
8 entities.

9 MS. KLEIN: That's all I have.

10 MR. MARGOLIN: Okay. Mike, is it
11 worth giving him a breather or do you think you'll
12 be quick? Not to be rude, but he's not a young man
13 necessarily.

14 MR. BOWEN: It's up to the witness.
15 If you need a break, we can take a five-minute
16 break.

17 (A brief recess is taken.)

18 EXAMINATION BY MR. BOWEN:

19 Q. My name is Mike Bowen. I'm the
20 attorney for the Ascend entities in this matter.

21 I take it from your prior testimony
22 you didn't do any due diligence yourself about
23 whether or not Seth Levine had any authority to
24 mortgage the Lenox Temple property; is that correct?

25 MR. MARGOLIN: Objection, counsel's

1 testifying. Misstating previous testimony. That's
2 about it.

3 Q. Is that correct, Mr. Tepfer?

4 A. No.

5 Q. What did you do personally to
6 determine whether or not Mr. Levine had authority to
7 put a mortgage for your transaction on the Lenox
8 Temple property?

9 A. There was -- there had been documents
10 recorded on those properties that had previously
11 been executed by Mr. Levine.

12 Q. So what documents are you referring
13 to?

14 A. I think there was a mortgage, I'm
15 talking from memory now, there's mortgages and other
16 loans that had been taken on the property by Mr.
17 Levine and he showed me an operating agreement, I
18 think, and he executed, made a statement, he signed
19 affidavits stating that he has the authority.

20 Q. Well, leaving aside anything that Mr.
21 Levine told you, what did you do to independently
22 confirm that he had the ability he claimed to have
23 on behalf of Lenox Temple?

24 MR. MARGOLIN: If you remember.

25 A. I have a recollection of some prior

1 recordings having his signature on that, on that
2 property.

3 Q. That's something that you
4 independently obtained or did you get that from Mr.
5 Levine?

6 A. From the title companies, it was part
7 of some of the title searches that I got.

8 Q. The title report that you have, that
9 would have been from Madison Title; is that right?

10 MR. MARGOLIN: Objection, if you can
11 remember.

12 A. Yeah.

13 Q. Well, the one that you produced was
14 from January of 2018. Is that the only one you had?

15 A. For this property?

16 Q. Yes.

17 A. Yeah, but they would have included
18 copies of documents that had Mr. Levine's signature
19 previously recorded, copies of previously recorded
20 documents with Mr. Levine was acting on behalf of
21 this entity.

22 Q. Other than the 2018 Madison Title
23 report, you didn't get an updated report late in
24 2018 before you entered into this agreement with Mr.
25 Levine in January of 2019, correct?

1 MR. MARGOLIN: Objection, there are
2 documents that have been produced that may or may
3 not answer that asking him now, to the best of his
4 recollection.

5 A. I don't recall, but I was satisfied
6 that he had the authority to act on behalf of it.
7 So Mr. Levine came to me with a little bit of a
8 reputation. He was known in the community,
9 certainly the Teaneck community, and his father was
10 a prominent man. He was a prominent man taking, you
11 know, business opportunities that were presented to
12 him by his father who was a bank executive or
13 something like that, and, you know, he came to me
14 recommended and he was all on the up and up, and I
15 didn't think he's gonna do anything that's, you
16 know, that's fraudulent or anything like that.

17 Q. Did you know his father?

18 A. I knew him through an intermediary.

19 Q. Did you know him directly?

20 A. No.

21 Q. Who recommended Seth Levine to you?

22 A. It was a gentleman -- well, actually
23 -- Judah Tyrnauer, the broker that I mentioned
24 earlier, and also, a relative of someone from Park
25 National was a good friend of his, was a good friend

1 of his father's so I got it from Park National also.

2 Q. Who at Park National?

3 A. Park National, Kenneth Schaum.

4 Q. How do you spell the last name?

5 A. S-c-h-a-u-m.

6 MR. MARGOLIN: Before the next
7 question, Mr. Schaum represents Park National. He's
8 Park National's executive. Mr. Tepfer was an
9 attorney for Ken Schaum and for Park National. To
10 extent there were communications regarding any legal
11 work that Mr. Tepfer was doing, obviously he can't
12 answer that.

13 MR. BOWEN: I'm not asking anything
14 like that.

15 MR. MARGOLIN: I want to preface that
16 to make it clear.

17 Q. Mr. Tepfer, when you referred to
18 Tyrnauer, is that a woman or a man?

19 A. Man.

20 Q. What's the first name?

21 A. J-u-d-a-h.

22 Q. Judah Tyrnauer also knew Seth Levine?

23 A. Yes, he had met with him.

24 Q. Other than that Madison title report
25 and other than what you heard about Mr. Levine's

1 reputation or what you had previously known about
2 it, did you, yourself, do anything else to
3 independently determine whether Mr. Levine had the
4 authority to mortgage the Lenox Temple property?

5 MR. MARGOLIN: Objection, the
6 documents speak for themselves.

7 A. If there's been any verification like
8 operating agreements and title reports, that's the
9 extent of it, and then his own affidavit, his own
10 affirmation.

11 Q. I'm asking things, I'm sorry to
12 interrupt you, but I'm asking for things that were
13 done independently, not relying on Seth Levine, but
14 independently from him. I take it the answer to
15 that is no, correct?

16 MR. MARGOLIN: Objection, counsel,
17 time out. Counsel specify the question. I don't
18 understand what the distinction is between reviewing
19 documents that are public record provided by Seth
20 Levine and independent. It sounds like you are
21 trying to confuse the witness.

22 MR. BOWEN: Mr. Margolin, I'm asking
23 you to stop coaching the witness. Let him answer.
24 If he doesn't understand, I will clarify.

25 Q. Mr. Tepfer, you and me, please answer

1 my questions. The question is simple. Other than
2 looking at the Madison title report which had filed
3 documents attached or at least referred to publicly
4 filed documents, other than that, did you yourself
5 personally do something independent of anything Mr.
6 Levine did or said to you to determine or to satisfy
7 yourself that he had the authority to act on behalf
8 of Lenox Temple in mortgaging Lenox Temple's
9 property?

10 MR. MARGOLIN: My objection's noted.

11 A. Okay, I can't tell you anything
12 specifically at this time. But I was satisfied
13 myself.

14 Q. Mr. Tepfer, please just focus on my
15 question. We've been going all morning. I'm trying
16 to end my questioning concisely and quickly?

17 A. Thank you.

18 Q. You don't have to explain yourself.
19 I'm just asking you to direct your answers to my
20 questions and you have opportunities to explain
21 yourself later?

22 A. That's all that I can recall at this
23 time. That's all.

24 Q. You also testified earlier -- I'll
25 withdraw that. You never met Mr. Levine, right?

1 A. Face-to-face, correct.

2 Q. And you spoke to him on the phone or
3 no?

4 A. Yes, certainly.

5 Q. You spoke with him on the phone but
6 you never met with him in person, right?

7 A. Correct.

8 Q. And you never met any of his family
9 members, correct?

10 A. No, that is correct.

11 Q. So you never met his wife or his
12 kids?

13 A. No.

14 Q. And you never spoke to them, right?

15 A. I think I may have spoken to them.
16 They may have been in the office perhaps. I may
17 have spoken to them.

18 Q. I'm sorry, you said they may have
19 been in the office?

20 A. Yeah, with him, not in mine.

21 Q. So were they on the phone with you or
22 no?

23 A. I have no specific recollection, but
24 I may have spoken to the wife at some point.

25 Q. But I'm asking you as a witness under

1 oath, can you testify that you did or are you just
2 saying you don't know?

3 A. I can say I don't know. I have some
4 sort of memory of having spoken to the wife. I
5 can't specify.

6 Q. Now, you said that Mr. Levine gave
7 you the operating agreement for Lenox Temple,
8 correct?

9 MR. MARGOLIN: Mischaracterizes
10 testimony.

11 MR. BOWEN: I'll withdraw the
12 question.

13 Q. Did Mr. Levine give you the operating
14 agreement for Lenox Temple as part of the due
15 diligence you did for this loan, your loan?

16 A. If it was in the documents that were
17 produced, then he gave it to me. If it was not, I
18 don't have a recollection of it at this moment.

19 Q. Did he give it to you -- let me ask
20 it this way. Did you get an operating agreement for
21 Lenox Temple at some time after the FBI raided
22 Mr. Levine's office?

23 A. I don't know. I don't know if I got
24 it or if I didn't, and I don't know when I got it.

25 Q. I'll represent to you that there was

1 an operating agreement for Lenox Temple that was in
2 your production, the J&J production to us in this
3 litigation?

4 A. Okay.

5 Q. Is that a document that you had as
6 part of the due diligence or did it come sometime
7 later?

8 MR. MARGOLIN: If you recall. Again,
9 there are emails that say it.

10 A. I think it would have been certainly
11 earlier than the FBI raided, but I don't recall
12 exactly. I can't say exactly.

13 Q. Now, that operating agreement, let's
14 show it to you. We'll mark this as Ascend No. 1.
15 So Exhibit Ascend 1.

16 (Exhibit Ascend 1, Certificate of
17 formation Lenox Temple, LLC, is received and marked
18 for identification.)

19 Q. If we go to the third page of that
20 document, please. Do you see the title page here,
21 Mr. Tepfer?

22 A. Yes.

23 Q. Dated July 3, 2013?

24 A. Yes.

25 Q. Do you remember reviewing this

1 document as part of your due diligence?

2 A. At this moment, I do not remember,
3 no.

4 Q. Are you aware today that this
5 document, although it gives Mr. Levine managerial
6 duties, he's not authorized unless he has the
7 majority in interest vote to mortgage the Lenox
8 Temple property; are you aware of that?

9 MR. MARGOLIN: Objection, compound
10 question. Objection, counsel testifying.
11 Objection, confusing question.

12 MR. BOWEN: I'll restate it if you
13 are confused.

14 Q. The question is simply are you aware
15 sitting here today right now that this document does
16 not give Mr. Levine the authority to mortgage the
17 Lenox Temple property unless he has the majority in
18 interest vote of all the members?

19 MR. MARGOLIN: Objection, don't
20 answer that. Counsel is now testifying what a
21 document states. It's not counsel's place to
22 testify. You can ask him a question what you
23 believe it says. You may not say yes or no to your
24 understanding.

25 A. I'll read it if you move it up a

1 little bit.

2 Q. Let me ask you this then before we
3 show you the document. Do you have any idea what
4 this document says? Do you remember about --

5 A. The contents? No, I don't remember
6 the contents of the document, no.

7 Q. So the contents say what they say.
8 I'm not going to take the time to show it to you.

9 A. Okay.

10 Q. It says what it says. If you had
11 read this document, do you have any memory saying to
12 yourself wait a minute, Mr. Levine does not have the
13 authority under this document to mortgage the Lenox
14 Temple document?

15 MR. MARGOLIN: Same objection,
16 counsel's testifying.

17 A. You're saying had I read it before
18 the loan, I would have insisted on something else?
19 Most certainly.

20 Q. I'll try to clarify my question. My
21 question is simply -- I'll ask it in a couple steps.
22 The first step is, do you recall actually reading
23 this document as part of your due diligence before
24 you made the loan to Seth Levine?

25 A. I don't recall that specifically now,

1 no.

2 Q. So the next question is, do you
3 recall at any point before you made the loan to Mr.
4 Levine having some question whether he had the
5 authority to mortgage the Lenox Temple property in
6 accordance with the Lenox Temple operating
7 agreement?

8 A. Did I have any question about it?

9 Q. Right. Do you recall thinking that
10 might be an issue there?

11 A. No, no. I gave him the money without
12 that hesitation.

13 Q. Now this document is dated July 3,
14 2013. Are you aware that there was a mortgage filed
15 and publicly recorded in Bergen County in November
16 of 2013 on behalf of Len Tepfer that was signed by
17 Ascend? Are you aware of that?

18 A. I don't recall that.

19 Q. And you didn't do your own
20 independent review of the public recordings for this
21 property, right?

22 MR. MARGOLIN: Misstatement, I'm
23 sorry, I have to object. There was a title policy.
24 This document did not appear in the title policy
25 because that mortgage had already been terminated.

1 So you are misleading the witness.

2 MR. BOWEN: Mr. Margolin, that's a
3 nice bit of testimony from you.

4 MR. MARGOLIN: As was yours.

5 Q. Mr. Tepfer, I'm asking you a
6 question. The question is, did you ever go, leaving
7 aside the Madison title report, did you ever go
8 yourself to look at what was publicly recorded with
9 Bergen County about this property?

10 A. I don't think so. Pay a visit to the
11 county clerk to look at a record of old documents,
12 no, I did not do that.

13 Q. You didn't ask Mr. Tyrnauer to do
14 that, right?

15 A. No, to go to look at the documents,
16 no.

17 Q. Did you ask or direct Mr. Tyrnauer to
18 do any due diligence specifically on the question
19 whether Mr. Levine had the authority under the Lenox
20 Temple operating agreement to mortgage the Len
21 Tepfer property?

22 MR. MARGOLIN: Asked and answered.

23 Q. This is specifically about
24 Mr. Tyrnauer. Did you direct Mr. Tyrnauer to do any
25 work to confirm that Mr. Levine had the authority to

1 mortgage the Len Tepfer property?

2 A. I don't recall that. I don't recall
3 that. I cannot say yes.

4 Q. Was Mr. Tyrnauer paid a fee, a
5 brokers fee or finder's fee?

6 A. Yes, he was. Perhaps by Mr. Levine.
7 I don't recall the exact disbursements.

8 Q. Well, was he paid by you?

9 A. I don't think so. I don't think so.

10 Q. By you, I mean J&J?

11 A. J&J, I have to look at the
12 disbursement that we made reference to earlier and
13 see if he received a disbursement on this.

14 Q. Is there a document that shows the
15 disbursements for this loan?

16 A. There would just be notations that I
17 would have made and copies of checks or something,
18 if he would have gotten paid.

19 Q. Where would those notations be made?

20 A. Something in a book or, you know.

21 Q. Did you produce those?

22 A. Did I produce that? No, I don't
23 think I did. If I didn't produce it, then there
24 probably wasn't any. Then I didn't pay him the fee.

25 Q. Well, this is a related topic, but --

1 I can move there. You produced the wire
2 confirmation?

3 A. Yes.

4 Q. But we don't have any record from you
5 about any other disbursements other than that wire
6 confirmation related to this note, to this loan; is
7 that right?

8 A. Right, yes.

9 Q. So you didn't make any other
10 disbursements, you meaning J&J?

11 A. I think not.

12 Q. Okay. Now, the wire confirmation
13 that you produced was for the amount of \$739,500,
14 not the full amount of 750,000. So the difference,
15 which is \$10,500, where did that money go?

16 A. That went to pay for legal fees and
17 for possible -- for contingent title expenses that
18 would be required for the recording of the
19 documents.

20 Q. So that money was held by J&J in
21 escrow?

22 A. Yes.

23 Q. It was held by you as the lawyer for
24 J&J?

25 A. Yeah, yeah.

1 Q. Was that \$10,500, was that actually
2 disbursed at some point?

3 A. Yes, it was disbursed for the
4 recordings, and there's a legal fee for the drafting
5 and preparation of the documents.

6 Q. And you got that legal fee?

7 A. Yes.

8 Q. How much was that?

9 A. My firm, I think it was 7,500 or
10 6,500. I have to see the breakdown.

11 Q. But Mr. Tyrnauer didn't get any
12 portion of that money; is that right?

13 A. I think not.

14 Q. Now, I did have some follow-up
15 questions to your testimony earlier today about the
16 mortgage. If we show you the mortgage agreement,
17 which I think is JLS Exhibit 12?

18 MR. MARGOLIN: Was that 12 used or 12
19 of premarked?

20 MR. BOWEN: 12 is the note.

21 MR. MARGOLIN: I guess what I'm
22 saying here is I wish they weren't premarked with a
23 number. Now we are going to have --

24 MR. BOWEN: We are using that
25 numbering. Mr. Duggan didn't change the numbering.

1 That's the numbering that the exhibit has.

2 MR. MARGOLIN: There will be holes in
3 numbers. There will be one then three then eight.

4 MR. DUGGAN: The documents all have
5 separate numbers.

6 MR. MARGOLIN: I know that. What I'm
7 saying, I'm just saying I won't be able to go later
8 and say document, one, two, three, four, five were
9 used. It will be one, two, four, six, nine.

10 MR. DUGGAN: That's correct.

11 MR. MARGOLIN: So we need a list. We
12 all have these documents. This is nothing new.

13 MS. GAO: It was JLS-14.

14 MR. BOWEN: Thank you. Let's put
15 that up.

16 Q. So if we go -- just go to the first
17 page of that, please. This document was eventually
18 recorded, right?

19 A. Yes.

20 Q. But you didn't record the
21 participation agreement, right?

22 A. No.

23 Q. Now, if you go to the text of this
24 document, starts with the definitions, probably page
25 2, right, okay, and I'm going to ask you then to go

1 to page --

2 MR. MARGOLIN: He can't go anywhere.
3 You have to show him.

4 MR. BOWEN: We are directing your
5 witness through the screen.

6 Q. So we are going to go to page 6, pdf
7 page 6, paragraph No. 4. Mr. Tepfer, this mortgage
8 was designed to be a first priority mortgage, right?

9 A. Excuse me?

10 Q. This mortgage was designed to be a
11 first priority mortgage, correct?

12 A. I believe so, yes.

13 Q. So, for example, if you look at
14 paragraph 4 of this document, and again there's
15 something wrong with the screen. I don't know,
16 Skye, could you see the whole document? Now it's
17 clear.

18 That paragraph requires the borrower
19 to discharge any lien that has priority over this
20 loan, right?

21 A. Yeah.

22 Q. You knew at the time that you made
23 this loan that there was a prior first position
24 mortgage on the property in the amount of about \$6
25 million, correct?

1 A. I believe so. I have recollection of
2 that, yeah.

3 Q. So the expectation was that this
4 mortgage would never be filed; is that right?

5 MR. MARGOLIN: Objection, calls for
6 speculation. Misstates testimony. Counsel's
7 testifying.

8 MR. BOWEN: I'm asking for
9 Mr. Tepfer's expectation at the time he entered into
10 this loan. The expectation was this mortgage would
11 not need to be filed; isn't that right?

12 MR. MARGOLIN: Again, keep rephrasing
13 that. You are misstating his previous testimony and
14 you are testifying. You can ask him what his
15 understanding was, not yours.

16 Q. Isn't that right, Mr. Tepfer?

17 A. No, it's not.

18 Q. So you entered into a participation
19 agreement with Seth Levine where you loaned him
20 \$750,000 on the understanding that -- in which Mr.
21 Levine took on the obligation to repay that amount
22 plus \$75,000 within 26 days, correct?

23 A. Yes.

24 Q. And the expectation was that if that
25 didn't happen, he would have another six months

1 until August of 2019 to pay the loan with the
2 interest, right?

3 MR. MARGOLIN: Misstates testimony.
4 You can answer the question.

5 A. Well, he was going to be granted an
6 additional period of time on the loan if he could
7 not pay it within the first 26 days.

8 Q. The additional period of time was six
9 months?

10 A. Yeah.

11 Q. Only if that happened, only if he
12 didn't make the full repayment by the end of the six
13 months, then you would be in a position to collect
14 on the collateral, right?

15 MR. MARGOLIN: No, no, misstatement
16 of documents and his testimony.

17 MR. BOWEN: Mr. Margolin, I'm going
18 to ask you to try to restrain yourself. Let your
19 witness give testimony. He's doing fine.

20 Q. Mr. Tepfer, I know you said --

21 MR. MARGOLIN: For your questions
22 he's doing fine.

23 MR. BOWEN: Yan, you can't keep
24 speaking over me. We are not going to have a
25 record.

1 MR. MARGOLIN: You just gave an
2 instruction and then immediately continued speaking,
3 so obviously I'm going to respond to.

4 MR. BOWEN: I'm directing the
5 witness.

6 Q. Mr. Tepfer, I'm directing this
7 question to the witness. Mr. Tepfer, you said the
8 answer to that question was no, right?

9 MR. MARGOLIN: I'm sorry, with I
10 question.

11 A. What was the question?

12 Q. The previous question was that if
13 Levine did not pay back the loan amount with the
14 interest within six months, then you, meaning J&J,
15 would have the ability at that point in time to
16 collect against the collateral, right?

17 A. Well, he had to continue to maintain
18 monthly payments as well. There were other -- I can
19 collect on the collateral if he defaulted as well.

20 Q. That's my question. My question is,
21 if he doesn't meet the terms of the six-month
22 requirement, meaning he doesn't fully pay you back
23 within six months, he's paying the monthly interest?

24 A. Yes.

25 Q. Is that what happened here, that

1 after February came and went, you didn't get the
2 \$825,000, right?

3 A. He didn't pay, but he didn't pay the
4 monthly either.

5 Q. Right. So by March, the next payment
6 that was due was the 20 percent interest on 825 was
7 due in March, correct, under the participation
8 agreement?

9 A. Yes.

10 Q. He missed that payment, right?

11 A. I have to check the record. I don't
12 recall exactly. Did I -- is that part of the record
13 that I submitted?

14 Q. Well, you know that Mr. Levine never
15 paid any money back on this loan, correct?

16 MR. MARGOLIN: Objection. When you
17 say money back, you mean principal or interest?

18 MR. BOWEN: Anything.

19 Q. I'll change the question. Did Mr.
20 Levine pay you any money on this loan?

21 A. I have to check. I have to check my
22 record of payment if I ever got one or two monthly
23 payments. I don't recall.

24 MR. MARGOLIN: What is this box? I
25 see a box.

1 MR. BOWEN: There's something wrong
2 with your screen. You can take the exhibit down.

3 Q. Mr. Tepfer, sitting here today, you
4 don't know if you got any payment from Mr. Levine on
5 this loan?

6 A. I did get -- when you say this loan,
7 I did get some payments on the prior loans, two
8 loans with him, and I have to check and see if he
9 ever made any single payment on this loan. I'd have
10 to check and see. I don't want to misstate
11 anything. He may have paid one or two months. I
12 don't have a recollection of when everything broke
13 loose and when the FBI raided him. I don't have
14 that straight in my head the dates when he
15 defaulted. He went out of business, I think, or
16 closed down as the rumors were spreading about him
17 having a serious problem maybe before the FBI
18 actually raided. I don't recall exactly, and I'd
19 have to see if he made any payment, one payment or
20 two payments or no payments on this loan. I have to
21 get back to you on that.

22 Q. Did you produce the documents, the
23 financial documents, showing payments on the loan?

24 A. I don't recall if I did not, then I
25 don't have any. Then the answer would be no.

1 MR. MARGOLIN: I believe Tim already
2 asked for the payment history, so we are going to
3 produce that after the deposition. We'll make sure
4 you get that.

5 Q. The fact of the matter is is that at
6 some point before August of 2019 Mr. Levine was in
7 breach of the participation agreement, correct?

8 A. Yes, right.

9 Q. You then took some steps to declare
10 default, right?

11 A. Yes.

12 Q. And that's when you took steps to
13 record the mortgage?

14 A. Record the mortgage, yes.

15 Q. But it wasn't until that missed
16 payment, whenever that occurred; is that right?

17 A. Yeah.

18 Q. Now, let's put up the participation
19 agreement which is JLS Exhibit 11. If you go down
20 to the terms look for the \$75,000 return payment,
21 It's paragraph 2?

22 A. Yes.

23 Q. So this 10 percent return of \$75,000
24 was due to be paid February 10, 2019?

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. That was not paid, right?

4 A. No.

5 Q. Now, the way this document works is
6 at the time that he failed to pay the \$75,000 by
7 February 10, he could keep the loan for another six
8 months as long he paid the monthly payment of
9 interest that's set forth?

10 A. Under the note --
11 MR. MARGOLIN: Counsel is
12 characterizing the document speaks for itself.

13 Q. Is that correct?

14 A. I believe so, yeah.

15 Q. But he still owed the \$75,000 too,
16 correct?

17 A. Yes. That was rolled into the
18 amount. It's for the 825.

19 Q. Now you testified that at some point
20 you said this was an initiation fee, \$75,000?

21 A. Origination, yeah, yeah.

22 Q. Origination fee. That's not what the
23 document calls it, right?

24 A. No, no.

25 Q. So I was just -- I'm confused by your

1 testimony that you called it something else because
2 there was some religious concern that certain
3 religious edicts or traditions had to be satisfied
4 by using a different terminology; is that what you
5 were saying?

6 A. Somewhat, yeah.

7 Q. What was, I think you used a Hebrew
8 word for it, what was the word that you used?

9 A. H-e-t-e-r-i-s-k-a.

10 Q. Heteriska. Was that your concern or
11 was that a concern that Mr. Levine raised or
12 somebody else?

13 A. It was both parts.

14 Q. What's your understanding of that
15 doctrine?

16 A. Which document? Heteriska?

17 Q. The doctrine, the doctrine of
18 heteriska, what's your understanding of that?

19 A. The doctrine is that interest is not
20 to be paid by a borrower to a lender or lender
21 should not collect interest, but if they are -- call
22 it if they are partners or participants, then in
23 lieu of making payment of a percentage of the profit
24 of the earnings or the income that's going to be
25 done, then you pay a fixed interest. We are sort of

1 partners, but I'll excuse you for giving me any of
2 the profits and I'll -- and just give me a fixed
3 interest, so that's sort of the fig leaf that is
4 used to enable that. There was, I think, a separate
5 heteriska document signed as well.

6 Q. In addition to this one?

7 A. I believe so. It may have been --
8 yeah.

9 MR. MARGOLIN: I believe it was
10 produced.

11 MR. BOWEN: You think that's in the
12 production? We'll check.

13 MR. MARGOLIN: If it's not, I'm sure
14 it's there. Every transaction always has one,
15 including JLS's.

16 Q. So that explains why the disagreement
17 was set up as investors in participation, right?

18 MR. MARGOLIN: Objection, misstates
19 the previous testimony already answered.

20 Q. Is that correct, Mr. Tepfer?

21 A. Yes, it was not a very artfully drawn
22 agreement. Again, I told you it was done, I
23 testified previously it was done on a rush basis
24 time of the essence, and an old form was taken.
25 There was some alterations and additions and

1 whatever, and it's not the thing I'm most proud of.

2 Q. What was the urgency?

3 A. There was a time of the essence for
4 Mr. Levine to conclude his deal on the purchase of
5 the mortgage.

6 Q. When did you first start talking to
7 him about this deal?

8 A. Sort of probably very shortly before
9 this.

10 Q. Before the date of this agreement?

11 A. Yeah, probably very shortly before
12 the loan was transacted.

13 Q. The date of this agreement is?

14 A. January 15.

15 Q. I'm looking at it.

16 MR. MARGOLIN: I'm pretty sure all
17 the document --

18 A. January 15.

19 Q. It's January 15?

20 A. Yeah.

21 Q. That's the date this document was
22 signed, January 15th?

23 A. Yeah, what the notary shows, what the
24 notary shows.

25 Q. The date of the wire is January 16 --

1 no, no, it was requested January 15 and it was
2 requested the next day. Does that sound right to
3 you?

4 A. Yeah, I don't have it in front of me,
5 but it sounds right.

6 Q. Given that this document was signed
7 on January 15 and the requested fund transfer was
8 that same day, when did you first start talking to
9 Mr. Levine about this deal?

10 A. It could have been very shortly
11 before, a day or two before.

12 Q. January 14?

13 A. I don't remember what day of the week
14 that was. It might have been a Sunday or Saturday,
15 but it could have been just one or two business days
16 before that.

17 Q. So January 15th was a Tuesday?

18 A. Could have been that same week or
19 perhaps at the end of the previous week.

20 Q. You don't have any specific memory if
21 it was a one-day turnaround or two-day turnaround or
22 something like that?

23 A. It was a rush turnaround. I don't
24 recall if it was, if it was that short exactly. It
25 was a rush rush turnaround.

1 Q. How would we figure out when that
2 first contact first started?

3 A. I don't know.

4 Q. Do you have documents that show
5 emails with Mr. Levine or phone call with him?

6 A. I don't know. Whatever --

7 MR. MARGOLIN: The documents speak
8 for themselves.

9 Q. So you don't know what document you
10 might have to be able to pinpoint when this deal
11 started?

12 A. Right.

13 Q. Mr. Tyrnauer brought this to you,
14 right?

15 A. I believe so, yes.

16 Q. Mr. Tyrnauer may have that
17 information, correct?

18 MR. MARGOLIN: I wouldn't bet on it.

19 A. Not documentary wise. He's not a big
20 document man. It was certainly a rush, frantic
21 frantic rush type of situation.

22 Q. All right, but going back to my
23 questions before about the heteriska. The fact that
24 the participation agreement's referring to a 10
25 percent return of \$75,000, that's not something that

1 was worded that way because of heteriska, right?

2 MR. MARGOLIN: Objection,
3 mischaracterizes testimony. He previously testified
4 about this.

5 Q. Is the way I said it correct,
6 Mr. Tepfer, that the wording in the participation
7 agreement?

8 A. It sort of had the heteriska
9 provisions leavened into it somehow and in order to
10 soften the loan aspect of it in this participation
11 agreement.

12 Q. Right. My question is the fact that
13 the participation agreement refers to a 10 percent
14 return of \$75,000, that wording wasn't required by
15 heteriska?

16 MR. MARGOLIN: He just answered that
17 question. I refer you to the previous answer.

18 MR. BOWEN: Mr. Margolin, if you stop
19 interrupting him, we can get a clear question and
20 answer and I can move on.

21 MR. MARGOLIN: You can be very clear.
22 You can look at his testimony.

23 MR. BOWEN: Mr. Margolin, I'm going
24 to deem you objecting to this question, but this is
25 the question your objection is noted. You don't

1 have to state it again.

2 Q. Mr. Tepfer, is it the case that the
3 use of the phraseology in this participation
4 agreement of a 10 percent return \$75,000, that
5 phraseology was not required by heteriska, right?

6 MR. MARGOLIN: Asked and answered.
7 Refer to the previous question.

8 A. This agreement was colored and
9 affected by the heteriska requirement in order to
10 give the appearance, the religious required
11 appearance of it being a return on an investment
12 rather than what it actually was, which was a loan
13 and a mortgage.

14 Q. And interest, and interest on loan?

15 A. An interest-bearing loan and a
16 mortgage, yeah.

17 MR. MARGOLIN: Could we use the word
18 kosher?

19 THE WITNESS: Kosher.

20 Q. Finally this document itself, if you
21 go to paragraph eight, referring to the same
22 exhibit, will see that this document was meant to be
23 kept secret and not disclosed to anybody, right?

24 A. That's just a standard
25 confidentiality agreement. It's a boilerplate

1 paragraph that was in the agreement.

2 Q. That's not required by heteriska,
3 right?

4 A. No.

5 MR. BOWEN: I have nothing further.
6 Thank you, Mr. Tepfer.

7 MR. MARGOLIN: All right. We are
8 going to take a five-minute break. I'm going to
9 speak to counsel to see if we want to put any
10 testimony on the record. My gut says no.

11 (A brief recess is taken.)

12 MR. MARGOLIN: We are good.

13 THE COURT REPORTER: Mr. Margolin,
14 will you be ordering a copy of the transcript?

15 MR. MARGOLIN: Let me consult with
16 local counsel and we will get back to you later in
17 the week.

18 THE COURT REPORTER: Ms. Klein, will
19 you be ordering a copy of the transcript?

20 MS. KLEIN: No, we don't need one.

21 THE COURT REPORTER: Mr. Bowen, you
22 had said that you were ordering a copy?

23 MR. BOWEN: Yes.

24 (Whereupon the proceedings were
25 concluded at 1:06 p.m.)

C E R T I F I C A T E

I, DONNA BRUNCK, a Certified Court Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S.41:2-2, do hereby certify that prior to the commencement of the examination, HERBERT TEPFER was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony that was taken stenographically by and before me at the time, place and on the date herein before set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties or attorneys to this action, and that I am not financially interested in the action.

I DO FURTHER CERTIFY that the within transcript format complies with Rule NJ ADC 13:43-5.9.

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Dated: April 8, 2022

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